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ABSTRACT

This manual focuses on the promotion of good risk management practices. The first of four sections presents an overview of risk management in terms of risk management concepts and avoiding, transferring, controlling, and financing risk. Second, the manual present methods for identifying and assessing risk. The third section discusses different facets of insurance policies and coverage: broker selection, changes and trends, risk pooling, policy coverages, and uninsurable risks. The last section discusses an effective risk management, or loss control, program, including contingency planning for emergencies and guidelines for high-risk areas (such as athletics, science laboratories, and school buses). Appended is a glossary of terms. (SI)

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# RISK MANAGEMENT FOR SCHOOLS

National Association of Independent Schools
18 Tremont Street, Boston, Massachusetts 02108

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# Introduction

As the insurance crisis began to affect schools in the fall of 1985, NAIS assembled a task force of business officers and insurance professionals to determine what could be done to lessen the impact of sudden and dramatic price increases and reduction in insurance coverages that exposed schools to unreasonable risk of an uninsured loss.

The task force came together several times to consider options and strategies. The results of its efforts were more substantive than any of us on the task force anticipated when we undertook this project.

NAIS arranged a comprehensive national general liability program with CIGNA, the largest property-casualty insurance company in the United States. NAIS also participated with the National Association of College and University Business Officers (NACUBO) in the creation of two new specialty companies: School College and University Underwriters Limited (SCUUL) and United Educators Insurance. The two new companies are related as parent and child, with the parent company located in Bermuda and its domestic offspring domiciled in Vermont and operating from Washington, D.C. Both companies offer umbrella coverages as well as trustee and professional liability insurance coverages that provide more extensive coverage with fewer exclusions than is generally available in commercial insurance.

These insurance programs work because independent schools generally are good insurance risks. Typically they have a wide base of popular support, good management practices, and vigilant parents and trustees who work with the school to resolve conditions that require corrective action to prevent accidents, injuries, and damage suits. The commitment of independent school people to sound management practices to reduce losses, whether insured or not, was recognized by CIGNA and is an important factor in its commitment to the NAIS/CIGNA program. In turn, NAIS agreed to promote good risk management practices in the field. This manual is an outgrowth of that commitment.

The manual started as a simple adaptation of a risk management manual produced by Uniservice Risk Management Corporation, the loss control division of Utica Insurance Company. It grew longer with additional material provided by CIGNA's loss control division and other material adapted from a risk management and insurance manual published by NACUBO.

As always, there are people to thank for their cooperation and assistance. Jed Jecen and Douglas Robinson, of Utica Insurance, were helpful in assisting NAIS with several national workshops on risk management and working out details of an agreement to share materials in our respective

manuals. John Walker and Claudina Madsen, authors of NACUBO's *Risk Management and Insurance: A Handbook of Fundamentals*, shared their knowledge and invited me to join them as a member of the faculty of NACUBO's risk management workshops. Ralph Beaudoin, vice president for business at Santa Clara University, was the motivating force in a series of national workshops in risk management for schools and colleges that proved a valuable resource in developing some of the materials in this manual. Finally, thanks go to Joseph W. Mecham, senior vice president of CIGNA, who arranged for CIGNA's loss control division to provide supplementary materials to be adapted for independent schools and incorporated in this manual.

The manual is intended as a reference for school business officers, other key school administrators, trustees, schools' legal counsel, and school insurance agents. It can be read through to gain general familiarity with risk management concepts, but it is most useful when key leaders in each school read the sections most relevant to their division or area of responsibility and adapt material to the particular needs of their own school. Business managers should review the manual before meeting with insurance agents to renew insurance coverage as well as in early summer, when their school's policy manual is being reviewed and revised for the coming year.

We hope this manual will help clarify a complex area of school business affairs and strengthen school insurance programs.

Arthur G. Broadhurst
*External Director of*
*Business Services, NAIS*
*Winter 1988*

# 1.
# An Overview of Risk Management

Risk is an unavoidable fact of life. No school can operate without exposing faculty, staff, students, and the school itself to risks that can cause death or injury to members of the school community or severe loss or damage to school property. In this increasingly litigious society, even the most seemingly inconsequential act or incident may give rise to a claim or a lawsuit.

Risk management is the formal process of assessing exposure to risk and taking whatever action is necessary to minimize its impact. However unfortunate or regrettable a loss may be in human or emotional terms, to an institution *loss* invariably means potential *financial loss*. "Risk management" is generally associated with "insurance" because insurance is the most common technique used to minimize financial loss, but it is not the only technique available to schools. *The function of risk management is to reduce the risk to which the school is exposed*, which requires (1) reducing the *frequency* and *severity* of incidents and events that are likely to have a negative impact on the school, and (2) reducing the *financial impact* of those incidents and events that occur.

Schools cannot prevent accidents, but they can reduce the likelihood of serious accidents occurring. Likewise, schools cannot prevent damage suits or claims, but they can take steps that reduce the likelihood of incidents or events occurring that might give rise to suits, that lower the chances of success of a suit, or that reduce the amount of damages awarded. In short, the purpose of risk management is to *minimize financial loss* to the school.

A prudent administrator "manages" this potential for catastrophe, and a responsible trustee seeks reassurance that the school's administration is managing potential risk effectively. Without a risk management program, however modest or informal it may be, administrators do not know what a school's potential exposures are and therefore have no rational way to protect it against loss. A good risk management program, carefully conceived and effectively implemented, provides reasonable assurance that the school community is doing what it can to protect itself and its constituents from harm and loss.

Moreover, insurance companies to whom we look to pay our losses increasingly insist that those insured do their part to control losses. No school can afford to make the mistake of assuming that by purchasing insurance it transfers the responsibility and the risk of catastrophic loss to an insurance company and can therefore safely ignore its responsibility for risk management. It is important to realize that the primary interest of the school's insurance carrier is to protect itself against catastrophic loss. Insurance companies have taken

steps to protect themselves by changing policy terms and conditions, reducing limits, writing exclusions into policies, and requiring coinsurance. School administrators and trustees who are ignorant of their risk management responsibilities jeopardize their institutions and betray their trust to protect and preserve the institution and its assets.

## Institutional policy and commitment

To be successful, the school's risk management program must be supported by the school head, the trustees, and members of the administrative staff. Risk management requires members of the school staff in widely differing functional areas to work together with a common objective. Unless the head and trustees realize the importance of risk management and are seriously committed to it, the program is not likely to succeed. Active support by the school head is the key to an effective program.

Someone must take the lead in instituting a risk management program. In some schools, the head or a key trustee may be the moving force. In others, the business officer may know more about the issues and therefore be in the best position to familiarize other members of the administrative team with the concepts of risk management.

Institutional commitment should be formalized in a policy statement that is distributed to faculty and staff, preferably as part of the school's policy manual for faculty and staff, and be reinforced through discussion in staff meetings and by supervisors. Here is one such statement.

### Model Risk Management Policy Statement

In order to implement the educational and operational goals of the school, and for humanitarian, social, legal, and financial reasons, the board of trustees recognizes that it is responsible for protecting the health and safety of all members of the school community, guests, and other members of the public from hazards on the campus and that it must protect and preserve the physical plant and other assets against losses.

The trustees, aware that the school is engaged in many and diverse activities in its academic and nonacademic programs, approve the recommendation of the administration to establish a program and procedures for managing these risks to the extent possible.

Therefore, the trustees direct that a formal risk management and insurance program be established and maintained at the school.

The head of the school is requested to vest a staff member with the authority and responsibility for the risk management and insurance program as part of his or her regular duties.[1] The head may also appoint a committee representing a cross section of the school community to advise the designated risk manager and to assist in implementing the program when appropriate.

The following principles are to guide the school in implementing the risk management program.

1. The safety of students, faculty, staff, and the public is paramount in all school operations.
2. Safety is not to be sacrificed in the interest of time or money.
3. All federal, state, and local laws, ordinances, and guidelines are to be complied with as quickly as possible, particularly those pertaining to health, welfare, and safety.
4. All employees are responsible for safety. Unsafe conditions noticed by any member of the faculty or staff are to be reported to the administration and corrected promptly.
5. All students, faculty, and staff are to be provided with all reasonable safeguards to ensure safe learning and working conditions.

The risk manager is responsible for establishing and maintaining the program, including identification and measurement of risk, program evaluation, and loss control activities. The risk manager has broad responsibility for protecting the school and its faculty and staff from fortuitous loss, advising the head on all potential sources of loss, and for recommending retention levels (the amount of insurance the school should carry, the amount of risk the school can reasonably assume through deductibles and coinsurance), loss prevention programs and practices, changes to the physical plant that will reduce risk, risk transfer devices, claims handling, and consulting services to carry out this responsibility.[2]

[1]Usually the business manager, but responsibility may rest instead with the assistant head; the vice president for business, finance, administration, or operations; or another senior administrator.

[2]The basic function may also include the employee benefits program, including plan and program design, administration, and representing the school to the insurance market. The director may also have overall or limited responsibility for safety administration and security.

The finance committee has overall responsibility for monitoring the risk management and insurance program and for exercising a continuing role in the decision process, at its discretion. It may from time to time ask for reports from the risk manager. The committee delegates routine monitoring of the risk management program to the head of the school.

## The risk manager

Risk management involves responsibilities in several widely differing functional areas. The staff member assigned the responsibility for risk management should be a key administrator who works well with both professional and nonprofessional staff, and particularly with those responsible for the areas most actively involved in risk management and loss control activities: buildings and grounds, athletics, transportation and bus operations, security, and laboratories. The risk manager should have an understanding of or be willing to learn the basics of risk management and loss control programs. Usually the risk manager is the initial link between the school and its insurance companies when an incident occurs or a claim is filed.

The risk manager coordinates the many facets of the risk management program and works with insurance brokers and consultants, safety engineers, inspectors from governmental bodies (fire inspectors, health department inspectors, occupational health and safety administration inspectors, among others), and other external agencies and persons.

The risk manager should understand the school, its mission, goals, organization, finances, physical plant, and its activities and functions. He or she needs sufficient versatility and technical competence to function at different levels both within the school community and in the community at large.

Imagination and good communications skills are important in gaining continuing support and cooperation by faculty and staff.

In an independent school, as in a college or university, risk management is ordinarily the responsibility of the business officer.

## Risk management concepts

The risk management process is fundamentally simple and easily understood. It can be expressed briefly in four basic strategies.

- Identify risk
- Evaluate potential loss
- Reduce exposure
- Finance loss

These strategies apply to all organizations however complex, but the program needed to carry them out varies in complexity with the size and sophistication of a given school, its particular circumstances and resources, and the inclinations of its risk manager.

### *Identify risk*

The first and most important job of the risk manager is to identify risks to which the school is exposed. If risks are not identified, the school has no way of measuring their potential impact or of taking steps to reduce their adverse effect. The school corporation, as well as its employees and trustees, is exposed to many risks, some obvious, others less obvious but just as real in their potential for serious financial loss. Typical exposures of the school include

- Direct damage or loss of school property due to fire, theft, vandalism, or natural events
- Damage to property of others through collision or discharge into the environment, bodily injury to students, employees, or the general public—a bus accident, an athletic injury
- Errors and omissions by professional staff or trustees—failure to educate, failure to supervise, breach of fiduciary responsibility

### *Measure the risk*

Once loss exposures have been identified, they should be analyzed to determine the seriousness of each risk and its potential financial impact on the school as well as appropriate techniques for reducing, controlling, or financing that risk. "Exposure to risk" has to do with the likelihood of an occurrence or event and its potential impact on the school should it occur. Evaluation of risk,

an imprecise science at best, involves judging the significance—likelihood and severity—of an occurrence, which in turn influences the method chosen for controlling or financing the risk.

### *Reduce exposure*

If a risk is significant—if it is likely to occur or, even if unlikely, could have a serious financial impact on the school—common sense dictates that steps be taken to reduce the school's exposure by *eliminating the risk* or *reducing the likelihood* that a damaging incident will occur. Three techniques can be used to reduce or eliminate exposure to risk: *avoid*, *transfer*, and *control*.

One way to eliminate the chance of loss is simply not to undertake activities that can result in loss. The key to any decision to *avoid* a high risk activity is to compare its benefits with its risks and costs. If benefit exceeds risk, the activity or project is feasible. If the potential for loss outweighs any possible benefit to the school or its students, or becomes *too costly* in relation to possible benefits that may be realized, the activity or program can be dropped. If the perceived benefits of a program or activity outweigh the potential risk, the program or activity can be continued or adopted.

If a program, activity, or project is important or vital, the school can attempt to shift responsibility, and consequent liability, to a third party by contract or a "hold harmless" agreement. For instance, the school could contract with a transportation company to bus students for field trips. The contract could require the transportation company to maintain adequate liability insurance, name the school as a "named insured" on the policy, and hold the school harmless from any claims as a result of accident or injury to students. The school could also require parents to sign a permission slip, to function both as an "informed consent" and a release by the parent for any injury sustained while participating in a field trip or program. By agreement or contract the school therefore manages to *transfer* the risk to a third party.

If the school decides that it cannot avoid a risk because an activity or program is important, and it cannot transfer the risk effectively to a third party, it can at least attempt to reduce the school's exposure to loss by using *control* techniques, which, in the case of a student field trip, might include maintaining and inspecting the school bus, requiring properly licensed and adequately trained drivers, and supervising student behavior while the bus is in motion.

### *Finance the loss*

All schools are exposed to risks and incur losses. Most losses are minimal—broken windows, petty theft or vandalism, minor injuries. More substantial losses may occur less frequently, and catastrophic losses occur only occasionally, but *they do occur*. Moreover, some degree of loss cannot be avoided. Paying for losses, both anticipated and unexpected losses, is a normal and necessary cost of doing business. Losses are financed in different ways depending on their *predictability*, their *frequency*, and their *severity*.

## Avoiding risk

The most effective technique for managing risk is to avoid any activity, program, event, or occasion that may create a loss. As a practical matter, risk avoidance may be a difficult tool for a school to use because of the broad range of activities and programs necessary to its educational purpose and the inherently "risky" nature of almost any school activity that involves students. If a school chose to avoid any program that involved some measure of risk to students or staff, practically no program would remain, and the school would have to close. At the same time, some programs and activities are obviously more dangerous than others. Some activities are dictated by school philosophy or policy, by specific action of the board of trustees, or by constituent considerations or expectations, effectively foreclosing the option of risk avoidance. And some activities and programs, quite apart from their inherent risk, produce intangible benefits to student growth and development, community good will, or student and teacher satisfaction that are difficult to measure but which on balance seem to outweigh potential risk.

Nevertheless, the school should consider avoiding activities that are likely to expose it to an

unusually high degree of risk, either because the activities tend to result in frequent or severe personal injury or because they expose the school unnecessarily to risks arising from direct contact with the wider public beyond the school's constituency. A decision to avoid risk may be an appropriate and acceptable response to school activities, ventures, enterprises, and programs that could result in serious loss to the school. The following activities, which tend to produce frequent claims or involve serious or catastrophic injury, should be reviewed carefully by the school to determine whether the risk and its associated costs may be so great as to conclude that the risk is unacceptable and should be avoided: football, skiing (both snow skiing and water skiing), horseback riding, survival and wilderness trips, trampoline, scuba programs, pilot training, gymnastics and acrobatics, mountain climbing, wrestling, day care programs, cave exploration (spelunking), and transporting students by school bus.

Even if the school is willing to assume the risk of these activities, its insurer may determine that the potential cost of claims and losses paid for a particular activity compel the insurer to seek an exorbitant premium to fund that risk; or the insurer may conclude that the likely cost of settling claims arising from a given activity is unacceptable and so may write exclusions for that activity into the school's insurance policy. In general, insurance companies call a risk unacceptable when they cannot predict anticipated losses with confidence or when such losses are likely to be so high that they cannot charge sufficient premium to fund those losses.

When the school is faced with the possibility of having to eliminate a program or activity to avoid risk, the following questions help it focus on the central issues.

1. How essential is the program or activity to the school's total educational program? Is it integral or peripheral to the school's mission? Will eliminating the activity render the school ineffective or obstruct it in reaching its goals?

2. Will loss of the program or activity, even if it is not essential to the overall mission of the school, render the school sufficiently less attractive that substantial damage may result—such as loss of students? If the program or activity merely enhances or enriches the school's curriculum, can another one be substituted for it?

3. Is the ratio between the cost of the program and the benefits derived from it satisfactory? Is insurance available for the program, or must all risk and attendant costs be borne directly by the school? Can the school afford the potential loss? (The cost of insuring a particular program or activity is not usually stated separately, but underwriters are generally willing to discuss the cost of a particular risk if asked.) What does it cost to cover the risk? Is the cost acceptable? The bad publicity that results when something goes wrong with an inherently dangerous activity is a hidden cost; is this cost acceptable?

The key to avoiding risk is comparing the cost of the risk with the benefits involved.

## Transferring risk

If risk cannot be avoided, the school may be able to reduce potential loss by transferring the risk, by contract or by mutual agreement, to an outside contractor or vendor, to students or their families, or to a third party not connected to the school.

### *Contracting for services*

Some programs and services are particularly suited to transfer of program responsibility, and associated risk, to an outside contractor. The school may find that using an outside contractor produces savings in administrative time and in direct and indirect costs, as well as savings in insurance premiums and reduction in risk.

Student transportation, particularly by school bus, is an area of substantial exposure that can be reduced or eliminated by contracting for bus service if it cannot be cut out. Some states mandate or permit transportation of nonpublic school students by local school districts; where available, this option should be pursued. Other states give local school districts the option of transporting nonpublic school students or contracting with, and compensating, nonpublic schools to transport their own students. Some schools separately incorporate

an affiliated bus transportation company that contracts with the school to provide bus service, but this arrangement may not be sufficiently separate to defend the school against liability. Any arrangement with a school district or transportation company should be examined carefully. A formal agreement should spell out responsibility and liability of the parties, indemnification and hold harmless agreements, and insurance requirements.

Some schools operate their own ski facilities for recreational and competitive purposes. The difficulty of finding insurance for ski lifts and the rapidly increasing costs of such insurance, even when available, added to the substantial cost of developing and maintaining ski facilities, may warrant contracting with a nearby ski area to use its facilities, particularly at off-peak times.

Wilderness, mountain climbing, and survival programs have come under increased scrutiny for the risk and possible danger involved. Insurers are less and less inclined to cover the risk of serious physical injury or loss of life that may result from such activities. Administrators who believe that programs of this type are an important aspect of the school program may find that contracting with professional organizations, such as Outward Bound, will not only reduce the school's liability but may reassure students, parents, and trustees that the program is being operated safely and competently. The school may find that *recommending* these programs to students and parents, rather than *operating* them, best helps it reduce its exposure without adversely affecting its educational program.

Other programs or services that are candidates for contracting are food service, security (particularly if armed), counseling, diagnostic and testing service, and equestrian programs. In reviewing its own programs and services, the school may find still other areas where its interests might better be served by contracting for services.

As it thinks about using outside contractors, particularly if primarily for the purpose of transferring risk, the school should keep the following points clearly in mind.

1. Using an outside contractor to provide services to students has both advantages and disadvantages; risk transfer is only one of several considerations. The school needs to state its priorities, weigh issues, and make an educational and business decision about those programs it can operate effectively and safely and defend with confidence—in court, if necessary—on the basis of the standard of care it exercises in operating a given program.

2. Contracting for services does not absolve the school of responsibility for appropriate oversight. Although the school can still be named as defendant in a suit to recover damages, a carefully written contract can remove the school somewhat from direct liability and reduce its exposure.

3. The school should ask its legal counsel to review all agreements and contracts for appropriate assignment of liability of the parties and for the requirements that the contractor carry adequate limits of liability and provide a certificate of insurance naming the school as an "additional insured."

### *Construction contracts*

Contracts with builders and construction companies routinely provide for assumption of risk by the contractor, whether for a major new building or minor renovations, remodeling or structural repair, and the like. Large contracts are usually prepared with the help of architects and reviewed by counsel, as they should be. Sometimes small contracts do not get the same attention, and they become potential sources of trouble because the school has not reviewed documents to see that it does not assume unintended liability.

If it has not already done so, the school's board of trustees should adopt guidelines instructing the school's business officer on policies and procedures for handling routine contracts for services and accepting proposals or work orders from builders and other contractors who perform work for the school. These guidelines should include (1) the level of approval required for different types and values of contract (administrative approval, buildings and grounds committee approval, approval by the full board, review by the school's attorney), and (2) specific requirements of contractual agreements (insurance requirements, appropriate hold harmless clauses,

an insurance certificate naming the school as an additional insured, etc.).

### *Use of facilities by community groups*

Many schools allow community groups, like scouts and church groups, to use their facilities, often for little or no compensation, sometimes "sponsoring" groups such as Girl Scouts or other community organizations. Schools also rent or lease their facilities to unrelated entities, such as basketball and softball leagues, tennis and swim clubs, soccer clinics, computer camps, and summer camps. Although the school may generate income as well as good will from outside use of its facilities, it should weigh carefully the balance between reward and risk, because the potential for loss can be substantial. If a participant or spectator in an activity sponsored by an outside group is injured, the school may be held liable for damages. As owner of the premises, the school always faces secondary liability in such a case. The school may have primary liability if the group sponsoring the event does not have its own insurance coverage. Even though the school's insurance policy responds to the loss, the school may have had to pay a higher premium for the insurance company's assumption of the additional risk and, because the policy is "experience rated," the school may face an increase in premium due to the loss. For this reason, it is important to limit losses by avoiding situations in which the school assumes unnecessary risk. One way of doing so is to prohibit use of school facilities for nonschool activities. This may be difficult or impossible, however, since schools tend to be the focal point of many activities. The best answer may be to devise policies that protect the school. The following policies and procedures, or similar ones, serve that purpose and could be adopted by the school's board of trustees.

1. Require *certificates of insurance* from outside groups that use school facilities. Such a document verifies the existence of the group's liability coverage and establishes the limit of its coverage. The amount of liability insurance required should be determined by board policy.

2. Require the school to be named as *an additional insured* on the outside group's liability policy. Having the school named as an additional insured affords extra protection. When liability cannot be avoided, the school can look to the group's policy to participate in the loss.

3. Require a *signed release* from the sponsoring group. A signed release shows the intent to transfer liability back to the party with primary responsibility—in this case, back to the outside group. The release should be a legal document drawn up by the school's attorney. Generally, the release should state that the group *holds the school harmless* from any and all liability for injury or damages resulting from the group's activity while using school facilities or on school property.

All three steps should be taken and the procedure consistently applied. This can be accomplished by routing all requests for use of school premises through the school business office. The business office can provide a "building use request form" to any group that wants to use the school. In addition to stating the three requirements outlined above, this form should ask for basic information about the group, details of intended use of the facilities, names of responsible individuals, and details of insurance. It should also list the rules and regulations governing use of school facilities.

### *Lease agreements*

Schools enter lease arrangements for various reasons—sudden and unforeseen increase in enrollment, loss due to fire or flood, or displacement during construction. Lease agreements frequently make the lessee liable for damages to the premises, sometimes in case of negligence on the part of the lessee, sometimes for damages to a building or other facility regardless of negligence.

For example, if a building leased by a school is destroyed by fire, and negligence by the school is alleged to have caused the fire, under the terms and conditions of the standard fire insurance policy, the landlord's insurance carrier can bring suit against the school (subrogation) to recover damages paid as a result of the loss.

In negotiating a rental agreement, the school should attempt to insert a hold harmless clause in the lease stating that the landlord agrees to hold

the school harmless for any damages done to the building or property whether caused by negligence or not. The exact wording of the clause should be drawn up by legal counsel. In addition, the school needs to review its insurance coverage to see that it is adequately covered for legal liability for leased premises.

At the same time the school must be sure to protect itself as well as it can from assuming unintended liability when entering into rental contracts. For instance, the school may rent an ice rink, swimming pool, function room, or recreational facility for a single occasion, or on a regular basis, and be asked to sign a *reservation and use agreement* in which it agrees to hold the facility's operator harmless and indemnify the operator against any losses sustained for any action brought against the facility or its operator that arises out of the school's use of the facility.

In other words, the facility may attempt to transfer its liability back to the school. In some circumstances that may be appropriate and acceptable, but the risk should be accepted knowingly and should be properly and adequately insured. Further, no one should be permitted to sign such agreements without proper authorization; sometimes club or class advisers not experienced in examining such documents and understanding their implications sign for use of facilities.

### *Parental consent*

Many schools routinely require signed parental permission forms for participation in certain activities, for playing some sports, for participating in sex education programs, for participating in field trips or off-campus excursions, and for other activities where "informed consent" seems advisable or necessary.

Permission forms appear to relieve the school, and its faculty members and parent volunteers, of liability for injury that may result from participating in the activity for which permission has been given, but they actually do very little by way of relieving any responsible party from liability. The primary value of permission forms lies in the information they give parents about activities in which their children may be involved and in the opportunity they afford parents to object to an activity. Permission forms help the school fulfill its responsibility of care to students—and to parents.

The school's designated risk manager should review with the school's attorney any circumstances, school programs, or special activities for which parental consent, hold harmless agreements, or releases may be appropriate. The school's attorney should be asked to supply the appropriate language for such forms to protect the school as much as possible from unreasonable claims.

## Controlling loss

Schools institute loss control programs to reduce the financial impact of risks that cannot be avoided or transferred to another entity. A well-devised loss control program geared both to *preventing* loss—lowering frequency of incidents—and *reducing* loss—reducing the severity of loss—involves the following steps.

1. Ongoing inspection, policy review, and analysis of incidents to identify particular exposures, risks, and safety hazards
2. An action plan to correct problems and remedy potential hazards
3. A schoolwide safety program
4. A legal audit to review policies, procedures, and documents for potential liability exposure
5. Employee training to develop awareness of potential risks and a sense of responsibility for taking corrective action or reporting potential risks
6. Reporting, investigation, and follow-up procedures on incidents that could result in claims

## Financing risk

Because risk eventually becomes loss and must be paid for, the school must determine the most efficient and least costly method of financing risk and, hence, loss. Risk can be financed directly from school funds as losses occur (risk retention), from a commercially managed pool of funds to which the school has contributed periodically through premium payments (insurance), or through a combination of the two (insurance with a deductible or co-insurance clause). Ultimately

the funding decision comes down to how much uncertainty and yearly variation in loss expense a school is willing and able to bear and how much security the school is willing to buy by exchanging uncertainty for the certainty of relatively level annual funding of losses through premium payments.

Sometimes insurance is described as a risk transfer mechanism because it transfers the risk of sudden financial loss away from the school and to an insurance company. Insurance does not really transfer the risk, however; it removes uncertainty about when the school's losses will be paid by spreading out payment for incurred or anticipated losses over time. Insurance is discussed extensively in Chapter 3.

In its approach to risk, the school can also be *uninsured*, by paying for losses directly through the operating budget, or *self-insured*, by establishing a fund in the accounts of the school, contributing to the fund on a regular basis, and charging losses to the fund as they occur. Direct funding of losses, whether through the operating budget or self-insurance, works best in when used with a solid loss control program.

Fundamental issues in selecting the right mechanisms for financing loss are *frequency of occurrence* and probable *severity of loss* of any given risk. How likely is a given risk to result in loss? What is the possible financial impact on the school of the worst case imaginable? How often can a given loss be expected? In other words, one way for schools to look at the issue of financing risk is to consider the *probability of loss* from a particular risk. The more predictable, and therefore certain, the frequency and severity of a given loss, the more reasonable it is to set aside funds to cover that loss. The less likely a risk is to lead to loss, the more difficult it is to predict the extent of loss that that risk might produce, and the more reasonable it is to cushion the school from sudden and severe financial loss by pooling (or insuring) the risk. (See Chapter 3 for a discussion of risk pooling.)

"Frequency" and "severity" are relative terms. A small school with limited facilities might consider ten broken windows "frequent" and a $25,000 uninsured loss severe or even catastrophic. A much larger school might deem the same losses infrequent and insignificant. Each school must determine its own level of tolerance for risk and decide the amount of loss that it can afford to retain (bear directly through current funds) and the amount it must fund over a longer period of time (through insurance or reserves).

Losses that are low in frequency and severity, such as pilferage, minor vandalism, disappearance of books from the library, and minor storm damage, are best handled as uninsured losses and funded directly through operating budget provisions for routine maintenance or replacement.

At the other extreme, risks high in frequency and severity should be eliminated. From the perspective of an insurer, such risks are likely to be uninsurable or so expensive to insure that commercial insurance is not feasible. If a serious risk cannot be eliminated and the risk is uninsurable, the school's administrators and trustees face a serious business and ethical decision as to whether the school should continue operations. For example, a small special-purpose boarding school is housed entirely in an old mansion that it has occupied for a number of years. The mansion contains dormitory space, faculty housing, dining room, kitchen, and offices. Although the house does not meet current building standards, local building inspectors have exempted the school from some requirements under "grandfather" provisions in the code. Safety engineers from the school's insurance company have determined that the prospect of fire poses serious safety risks. The building is uninsurable, and the school does not have sufficient resources to rebuild or replace the structure or to compensate victims of catastrophic loss. The school—and its trustees—have both a legal and moral duty to students and staff in deciding whether the school can continue to operate under these circumstances.

Risks that are frequent and predictable but not severe are candidates for funding through self-insurance or through a replacement fund, perhaps coupled with an appropriate deductible in a related insurance policy. Use of insurance with an appropriate deductible allows the school to assume a level of risk for self-funding it can tolerate but provides a "stop loss" when losses turn out to be more

severe than anticipated. Insuring high frequency – low severity risks is not only expensive but can adversely affect the school's insurance program because underwriters become nervous over numerous claims and losses, regardless of their cumulative value. It is a wiser use of risk management dollars to manage and fund small losses internally and use insurance for protection against more serious losses. Losses that can be handled internally are glass breakage, vandalism, burglary and theft of equipment, physical damage to vehicles, and damage to compressors and motors. The school should work with its brokers and insurers to determine which risks the school reasonably can assume and what level of deductible or risk retention is suitable in each instance.

Severe or catastrophic loss should be insured but occur infrequently. However seldom it may happen, however, some loss is unavoidable: buildings are lost in fire or flood, athletes get injured, students are hurt and sometimes even die on school outings, loss of life occurs in dormitory fires. Insurance is the way the school pays—insofar as payment can be made—for catastrophic loss for which it is legally liable.

It is important to understand that insurance pays for the school's risk by spreading it out both horizontally (to other schools) and vertically (over a long period of time for the school itself) to reduce the financial impact on the school of sudden unanticipated loss. The following pair of examples will illustrate the concept of vertical and horizontal spread of risk

Fire loss is predictable; insurance actuaries can determine how many fire losses are likely to occur in a given year and how much it costs to settle each claim. Consolidated Insurance Company experiences a fire loss in one out of every 100 schools it insures and has an average paid claim of $400,000. The company's expenses and overhead are an additional $100,000. The company's total cost of insuring each school is therefore $500,000. Because Consolidated must charge premiums high enough to recover its costs, it charges an average premium of $5,000 per school ($5,000 × 100 schools = $500,000). The company expects a loss in 1 per cent of the schools it insures. It spreads the loss horizontally—across the schools—because neither it nor the schools know which school will experience the loss.

Corinth Country Day School, as one of the schools insured by Consolidated, has these same data at hand, but it looks at its risk of loss vertically rather than horizontally; it can spread its loss over time. Corinth knows that it has a 1 per cent chance of experiencing a loss this year due to fire. Another way of looking at its risk is that it can expect a substantial fire loss once every 100 years. Consequently, the school must be prepared to fund the replacement of that loss over that same 100-year period. In other words, Corinth's anticipated $500,000 loss must be financed, through an insurance pool, at a rate of $5,000 per year.

This illustration, while oversimplified, does show that risk can be spread in several ways simultaneously, and it helps to dispel the view that insurance pays for someone else's losses. Insurance is a mechanism for covering an individual school's losses over time.

## *Using deductibles effectively*

Effective use of deductibles is one handy technique for financing risk. Available under just about every line of insurance, deductibles are used most often with property coverages. They enable the school to assume the high frequency – low severity losses that are so costly to insure yet allow the school to maintain insurance protection for catastrophic losses.

The success of a self-funded program normally depends on the ability of the school to finance the retentions (deductibles) from savings on premiums that are realized under the program. For this reason, selection of a deductible should be based on *comparison of premium savings with expected losses* to determine the most cost-effective alternative. If loss data for the previous five years are available, they will provide the information the school needs to predict future losses with fair accuracy. In many instances, savings on premiums provide the dollars needed to finance retained losses. However, significant amounts should not be risked for the sake of saving a little or losses be assumed when net premium savings are marginal.

In a recent quotation by an insurance company to a school, the cost differential for first-dollar coverage versus a $50,000 deductible per occurrence and $150,000 annual aggregate deductible is $140,000. The school has been experiencing average annual losses of $45,000; in only one year of its entire history have claims exceeded $150,000, this caused principally by one incident. The underwriter is now requiring nearly 100 per cent compensation for assuming that risk. The school's normal practice has been to purchase liability coverage without a deductible amount, but this proves no longer economical, so the school is setting aside a reserve of $150,000 and taking reduced coverage. If it experiences a normal year, it will have saved over $100,000. Smaller institutions can figure comparable savings by multiplying these values by whatever number—10 per cent, 25 per cent, 50 per cent—brings them into their own range.

A properly structured uninsured self-funded program for financing risk can produce several benefits to schools, as follows.

1. Premium savings are realized. The school assumes small frequent losses, and the insurance company saves the cost of adjusting and paying these losses. This saving is passed on in the form of lower premiums.

2. The premium savings realized can be used to broaden current insurance coverage. If frequent losses are insured, insurance dollars are not being well used. Insurance works best as protection against catastrophic loss.

3. The deductible becomes a foundation for additional assumption of risk and premium savings as the school gains experience in self-funding.

4. The deductible will encourage an effective loss prevention program. If the school is responsible for first-dollar losses, it is more likely to initiate measures to alleviate them.

## Using consultants and advice

Whereas business and industry often call upon independent consultants for help in managing risk, schools have been slow to recognize the need for expert technical help with risk management and insurance. Most schools do not have people on their staff or even on their board of trustees who are qualified to manage risk effectively or to determine adequacy of insurance coverage. As they do in other fields, consultants in the insurance industry vary considerably in their technical competence, and so the school should do its best to choose the right consultant for a particular purpose. Consultants who also serve as insurance brokers or agents may not have sufficient detachment to give the school the advice it needs. Unlike brokers, consultants generally work for a fee rather than a commission.

Consultants offer the following services, among others.

- Identify risks and exposures
- Recommend a safety program or loss control activities
- Review policies to determine adequacy of coverage, match policies to exposures, avoid duplication
- Develop criteria for insurance coverage, evaluate proposals, identify possible markets
- Design alternative techniques to finance risk, determine areas for self-insurance, recommend appropriate deductible and retention levels
- Define special risks, obtain coverages requiring special markets
- Appraise property, prepare schedules of value for insurance

While a consultant's fee may appear high, a well-chosen consultant should be able to save the school money on insurance and ensure a better level of protection. A good rule of thumb is to budget an amount equal to 10 per cent of insurance premiums for a consultant and other risk management activities. Wisely spent, this additional sum should save at least that much on premium costs. The school can also make effective use of advice from broker-agents and insurance companies.

Advice on loss engineering and safety services from insurance companies is not free, for the school has already paid for these services as part of its premium and should therefore take advantage of them. Major insurance companies have loss engineers and loss control services that may be called on directly or through a broker. Smaller insurance companies may contract for these services and not be as willing to provide these ser-

vices to small accounts. Most insurance companies, however, require physical inspection of insured premises that results in a written engineering report submitted to insurance company underwriters as a basis for determining premium levels and exposures. Many companies make this report available to those insured because it is in their interest to have clients work with them to reduce exposure to loss. Many insurance companies also provide specific recommendations to clients as a result of their loss engineering. Some companies require remedial action as a condition of writing insurance and make recommendations to clients in areas of their particular concern. Loss engineering services provided by insurance companies are limited in scope, however, and are related to particular insurance coverages sought by the client. Recommendations made by insurance company safety engineers should be taken seriously and action be taken to correct deficiencies. In a tight market, schools with uncorrected deficiencies may find their policies canceled or their coverage limited.

Broker-agents can also help the school identify risks and determine appropriate levels of coverage. Because broker-agents are paid a commission—generally 12 per cent—they are not disinterested parties. Local broker-agents may have limited experience with school insurance issues and coverages, particularly if the bulk of their business is in personal lines, and so they may not know much about types of coverage, levels of insurance, or special markets that serve educational institutions. Too often the school's insurance agent is connected with the school as trustee, parent, or contributor. A 1985 survey of member schools undertaken by NAIS revealed that 40 per cent of those responding had an insurance broker or agent connected with the school in some way. In general, such an arrangement is not in the best long-term interest of the school, for it offers potential for conflict of interest or makes it difficult for the school to obtain an independent or disinterested review of coverages and premiums for fear of offending the agent.

# 2.
# Identifying and Evaluating Risk

Managing risk does not have to be complicated. It can become so because of the complexities of a particular school, but the basic process is always the same.

- Identify potential human, physical, financial, and natural losses
- Measure the effect of potential loss on the institution
- Apply risk-handling techniques: avoid loss when feasible, transfer loss when possible, control risk to reduce its impact, and finance losses appropriately

## Identifying risk

Risk management starts with careful identification of areas of possible loss to which the school is exposed. Schools are exposed to many kinds of risk, some obvious, others less so. The risk manager looks for different kinds of risk, while recognizing that any incident or event may give rise to more than one type of loss. Typical risks faced by schools include loss of income due to damage to school buildings that limit operations, death or disability of employees, loss through fraud or criminal acts, physical damage to school property through fire or flood, and responsibility for loss or injury to others through negligence by school employees or agents. The many risks faced by schools are typically grouped by insurance companies into the following categories according to the type of policy that covers each risk.

### *Property damage or loss*

Property may be *real* property—buildings and structures—or *personal* property. Buildings can be destroyed or severely damaged by flood, fire, windstorm, tornado or hurricane, earthquake, heavy snowload on a roof, faulty construction, or plumbing leak or rupture. Any serious damage or loss of classrooms, laboratories, offices, dormitories, gymnasium, or dining facilities that renders them unusable disrupts school operations and could result in additional financial loss through student withdrawal or extra expense for temporary replacement of facilities.

### *General liability*

Liability is the obligation to pay for loss to others for injury or damage caused by the school, its officers, employees, or volunteers due to negligence. It is an exposure faced by every school as well as all faculty, staff members, volunteers, and trustees individually. It is therefore important to identify liability losses that could occur from acts or omissions of the school, its administrative

officers, faculty and staff, volunteers, or trustees. This liability includes

*Personal injury*

- Deprivation, violation, infringement, or denial of constitutional rights or due process
- Discrimination (age, handicap, race, religion, sex)
- False arrest, detention or imprisonment, or malicious prosecution
- Libel, slander, defamation, or violation of right to privacy

*Bodily injury*

- Death or disability
- Injury (physical or emotional)
- Sickness or disease

*Property loss or damage*

- Injury to, or destruction of, tangible property of others caused by the institution or its agents
- Loss of property in the custody of the school

### *Automobile liability*

Automobile risks, which include vehicles of all types (trucks, tractors, cars, vans, school buses), fall into two categories: risk of physical damage to the school's vehicle (collision, fire, theft, etc.) and responsibility of a school vehicle or its driver for personal injury or property damage to another (liability). The risk may involve school-owned vehicles, leased or rented vehicles, or borrowed vehicles.

The school's liability may extend to vehicles owned by school employees or parent volunteers when being used to transport students to or from school activities.

### *Boiler and machinery risks*

A school may experience loss due to explosion of pressure tanks, boilers, and furnaces, as well as loss of motors, pumps, compressors, electrical equipment, generators, and other machinery. Some of these losses can be self-funded, but other boiler and machinery risks can be serious and costly.

### *Worker's compensation*

The cost of on-the-job injuries to school employees is governed by state laws that hold employers responsible for paying for all loss experienced by an employee or guest worker at the school, including medical expenses, salary continuance, permanent or temporary disability, loss of limb, death settlement, rehabilitation, investigation, and litigation.

### *Fiduciary and employee benefits liability*

Administering employee benefit programs (retirement, life insurance, medical, long-term disability) involves some risk of loss—errors and omissions. These include failure to pay premiums on time. For instance, failure on the part of the school's benefits administrator to submit a new employee's application and premiums to a medical provider could result in the school's being liable for uninsured medical expenses incurred. Similarly, the school could become liable for the payment of death benefits, in the event of an untimely death, for pension benefits, or for an increase in the value of pension benefits missed by an employee due to late or missing payments.

### *Hazardous substances*

Hazardous substances at some schools may pose risks (whose full extent may as yet be unknown) to the environment, the general public, and school employees and students. Hazards on campuses include

- Asbestos
- Carcinogens and infectious agents
- Chemical discharge from biology and chemistry laboratories into drainage systems
- Chlorine (gas or liquid) for swimming pools
- Effluent from malfunctioning waste water and sewage treatment facilities
- Gasoline or fuel oil storage facilities (surface or underground), even if no longer in use
- Herbicides, pesticides, and fertilizers

### *Trustee liability*

In our increasingly litigious society, trustees have been held liable as individuals for actions taken as members of a school's governing board. Typical "wrongful acts" that could result in claims or suit against independent school trustees are

- Acts beyond authority or in violation of school bylaws
- Breach of contract
- Breach of fiduciary responsibilities
- Improper or unreasonable compensation arrangements
- Conflict of interest
- Discrimination (age, handicap, race, religion, sex)
- Failure to attend trustee or committee meetings
- Failure to comply with governmental regulations, procedures, and requirements
- Failure to deliver services
- Failure to disclose material facts or dissemination of false and misleading information
- Failure to exercise ordinary and reasonable care in the performance of duties
- Failure to follow correct procedures for maintaining tax-exempt status or causing the school to incur unnecessary tax liability
- Failure to inspect the school's books and records in order to keep abreast of its activities
- Failure to insure against loss
- Failure to observe donor restrictions
- Failure to verify facts in official documents before signing
- Financial decline or mismanagement
- Lack of accreditation or its loss
- Mismanagement of funds
- School closure or merger
- Sexual harassment
- Treble damage liability under antitrust laws
- Violation of rights of students and faculty
- Violation of due process

### *Professional liability*

Teachers, coaches, guidance counselors, school chaplains, and other educational professionals can be held legally liable for errors or omissions in the exercise of their professional responsibilities. Typical risks include

- Errors and/or omissions in counseling, therapy or remediation
- Failure to educate
- Improper, inappropriate, or ineffective diagnosis or treatment of learning disabilities
- Inadequate supervision
- Medical malpractice
- Violation of privacy rights

### *Other areas of risk*

Other risks, some peculiar to educational institutions, may result in serious loss to the school. These should be identified as risks where appropriate.

- Business interruption (loss of tuition, contracts, rents, and other income)
- Contamination of the school's water supply by an unknown source
- Damage for infringement of copyright (most commonly for unauthorized performance of musical or dramatic productions, unauthorized reproduction of copies on an office copier, or unauthorized copying and distribution of computer programs, unauthorized videotaping of television programs, and so on
- Judgment for punitive damages, fines, or penalties
- Liability arising out of dishonest, fraudulent, or criminal acts
- Loss of gifts, tuition, grants, good will, and prestige due to disruptive activities, strikes, boycotts, threats of violence, bomb scares, kidnapping, rumor, or extortion
- Loss or damage to buildings and contents from radiation contamination (may apply if located near a nuclear power plant)
- Losses inflicted against the school by others for which the school is not compensated (uninsured or insufficiently insured motorist, bankruptcy, etc.)
- Mental or emotional abuse, humiliation, or ridicule
- Physical abuse or corporal punishment

- Replacement of valuable papers and records, particularly loss of accounts receivable records or student transcripts
- Sexual abuse or molestation, whether by a school employee, another student, or an intruder
- Violation of privacy rights

## Institutional risk assessment

Institutional risk assessment is a formal and systematic process of identifying and evaluating risks to which the school is or may be exposed. In order to be effective, the assessment must attempt to cover all types of risk. Generally, an assessment consists of the following steps.

- Physical inspection of the campus (buildings, grounds, traffic patterns, laboratories)
- Inventory of real and other property
- Review of school programs (athletics, trips, other high-risk activities)
- Legal audit or review (contents of faculty and student handbooks, admission materials, employment application and process, employment and student files, contracts and leases, benefit programs)

The first institutional assessment the school makes will be difficult and time-consuming, but it is essential if the school is to have confidence that its risks have been successfully identified and are being managed properly. Once the first assessment has been conducted, periodic review should become a regular procedure.

Who should conduct the assessment? That depends on the complexity and size of the school's operations and the skills of its staff. The legal audit should be conducted by an attorney who has sufficient expertise in the areas under review. A qualified appraiser should establish or review the school's schedule of values and determine that the values are current. Consultants may be used for loss engineering, review of policies, or safety evaluations. The school's insurer may provide results of its physical inspection and recommendations. However, a staff member or professional consultant should coordinate the process to ensure that the assessment is comprehensive and that its components are integrated into a final report to the school's administration and board of trustees.

## Risk-assessment guidelines

Institutional risk assessment has several purposes. The school should keep these in mind as it undertakes its assessment, as follows.

- To gather data necessary to establish values of school-owned property
- To uncover particular risks and exposures of the school so that the school may be adequately protected from contingencies that can be anticipated
- To compile good data as background for preparing the school's application for insurance and making a strong case on behalf of the school
- To support a claim to an insurance company to recover loss of insured property
- To establish a reasonable basis for a loss control program

Schools are urged to work their way through these guidelines in systematic fashion, modifying or adapting them as necessary to meet their particular needs or characteristics. The guidelines, given below, consist primarily of questions that are intended to stimulate thinking about possible problems or avenues of approach to particular exposures. The guidelines are not intended to be exhaustive or complete; the variation among schools makes it difficult if not impossible to construct an instrument that covers all possible risks. Once the assessment is complete, a document should be prepared for review by the administration and the trustees. This report can also be used as the basis for discussions with insurers, underwriters, and brokers. If carefully and thoughtfully done, the assessment report will suggest areas of particular risk that need corrective action.

### *Buildings and other structures*

A property survey, campus map, or schematic drawing, identifying each structure or building and showing its location, should be included in the assessment. If the school has more than one campus or owns or occupies other facilities off campus, a survey map of each such facility should be included in the assessment.

A risk profile that shows the following basic data should be prepared for each building and structure (maintenance shed, boat dock, etc.).

- Identification (name of building), location (on map)
- Type of construction
- Size (square footage, number of floors)
- Owned? Leased to or from others?
- Where are the building plans kept?
- Date of original construction
- Date of substantial additions, renovations, and their cost
- Current use?
- Original cost, if known?
- Estimated replacement cost?
- How determined and when?
- Any recent formal appraisal of the structure? By whom? When? (attach a copy)
- Any encumbrance or mortgage? If so, what is the amount? Who holds the mortgage?
- Does the building contain a fire alarm system? What type? Installation date? How often checked, and by whom?
- What security does the building have? Alarm? Watchman? Security cameras? Lighting? Who has access to the building during off hours?
- Type and location of fire extinguishers? How often serviced? By employees or service company?
- Location and response time of fire station? Fire hydrant and standpipe locations? Professional or volunteer fire company? Any sprinkler system?
- Loss record of this structure?
- List of contents and their values
- Insured amount? Deductible? Each loss or aggregate? Are these amounts appropriate, or should they be modified?

The following special risks and considerations may apply to some buildings and should be noted on separate building profiles where appropriate. While this list makes no attempt to be exhaustive, it may suggest areas of risk that informed inspection may reveal.

- Are there enough exits? Are they properly illuminated? Is there a fire escape?
- Are stairways enclosed? Are they free of clutter and equipment?
- Is smoking permitted?
- Does the school have any mobile classrooms, prefabs or other temporary buildings? Are any structures slated for demolition or removal?
- In older buildings, has electrical wiring been checked for deterioration and adequacy to support current loads?
- Is asbestos present? Any plans to remove or encapsulate it?
- Are students permitted to use heaters, hotplates, refrigerators, or extension cords in dormitory rooms? Can the electrical system handle the load safely?
- Are stage curtains, gym dividers, wall coverings, ceiling tiles, and flooring materials made of noncombustible materials?
- Is tempered, safety, wire, or laminated glass used in windows?
- Are flammable materials kept on the premises (paint or lacquer, solvents for wax removal, gasoline for lawn equipment, propane for torches, etc.)?
- How are laboratory chemicals stored? Has the inventory been checked for hazardous, flammable, or unstable chemicals? Are labs equipped with alcohol or propane burners? How are waste materials from the labs disposed of? Is the lab ventilating system separate, or can smoke and pollutants circulate through the system to other classrooms? Do drains from labs lead directly to sanitary sewers or a septic system?
- Should people need to leave a building because of fire or other emergency, does the school have clear "closedown" procedures for the business office, science labs, kitchens, computer center, and other vital areas?
- Do any administrators, faculty members, staff members, maintenance persons, or other employees live on the grounds? Is their presence a deterrent to intrusion? Do campus residents have specific responsibilities for security or safety?

### *General liability exposures*

Parents have a right to expect the school to provide a safe environment for their children. School administrators, teachers, and other employees have a duty to provide that environment and to operate the school with care for the welfare of students entrusted to them. The school has no obligation to provide a *risk-free* environment, however, for risk is an aspect of life that parents,

teachers, and students alike have to live with.

Schools and their employees can be held liable (required to pay money damages) if they fail to exercise a reasonable and appropriate standard of care and if their negligence results in or contributes to injury of a student, an employee, or any other person.

The following list, while not exhaustive, suggests some areas that typically result in liability claims against schools. Each school should identify its own exposures and take action to protect itself against loss and to limit the risk of injury to students and others.

*Athletics*

Are coaches, assistants, trainers, and others involved with athletics qualified to instruct students properly and safely? Does the school have a clearly stated and enforced policy on safety, sportsmanship, and proper conduct by players and coaches? Are coaches prohibited from using sick or injured players in a game or practice? Does the school have a policy on discontinuing practices/games if lightning threatens?

- If the school has a swimming pool, is it secure from intrusion and use when not supervised? Is it supervised by a fully qualified and certified Red Cross water safety instructor or the equivalent?
- Does the school have a rifle or pistol range? Is it secured? Where are weapons and ammunition kept? Is the supervisor qualified (military, National Rifle Association)?
- Is a physician (or other emergency medical personnel) present at football games and other sports events involving hazardous contact? Is an ambulance present or on call? Does the school require parental permission for emergency medical treatment by physicians and hospitals if the parent is not available, particularly for "away" games and at residential schools? Are the permission forms readily available to coaches so that they will have them when and where they need them?
- If the school has a water sports program (sailing, canoeing, water skiing), is the program adequately supervised by trained and qualified personnel? Are a rescue boat and emergency equipment on hand?
- Are students who participate in athletics given, or required to have, a physical examination each year? Are medical reports reviewed by the school's physician?

*Discipline and dismissal*

What conditions or actions lead to discipline or dismissal of a student or an employee? Are the causes of termination spelled out in letters of appointment, teaching contracts, and staff and student handbooks? Are dismissals cleared through the school's attorney?

- Are student fighting, bullying, harassment, and intimidation addressed by school rules? Is proper and consistent disciplinary action taken when incidents occur?

*Employment*

Does the school have established procedures and clear responsibility for enrolling new employees in benefit programs as they qualify and notifying employees of their rights under the Employee Retirement Income Security Act (ERISA), the Consolidated Omnibus Reconciliation Act (COBRA), and other federal and state legislation regulating employee benefits?

- Are references of all applicants for faculty and staff positions checked carefully? Are academic degrees verified? Where permitted or required, and as appropriate, are background checks made for criminal records and arrests for morals violations?

*Health*

Does the school have a designated physician? Does the physician advise the school on health and medical issues, policies, and procedures? Does the school have a nurse? Does the nurse operate under medical control or guidance from the school's physician? Do school personnel dispense medication?

- Are all staff who have a "need to know" sufficiently informed about the physical, medical, mental, or emotional condition of students with difficulties to take proper action if and when circumstances require?
- Does the school have a policy for dealing with staff members or students who have contracted AIDS or Aids Related Complex (ARC)?

*Safety and security*

Who is responsible for identifying and correcting hazards on the campus?

- Playgrounds, a source of injury even when supervised properly, are an "attractive nuisance" after school hours. Is playground equipment properly designed and free of special hazards? Is it installed and maintained properly? Are playground supervisors vigilant, in control, and qualified to handle an emergency? Is access to playground areas controlled when not supervised?
- If the school uses volunteers (including parents and students) or part-time employees to supervise or assist with activities, are they trained properly? Can they handle emergencies?
- Are fire (tornado, nuclear reactor leak, or other emergency) drills conducted regularly under proper supervision? Does the school have an adequate procedure for accounting for all students during an emergency evacuation?
- Does the school have established procedures for routine safety inspections and maintenance of facilities and equipment, including vehicles, athletic gear, gyms, and locker rooms (including unprotected walls, slippery floors, and hot water controls), electrical and scientific equipment, HVAC (heating, ventilating, and air conditioning) systems, playground equipment, grandstands and bleachers, stairways and exits, emergency lights, and condition of playing fields?
- Are live insects, reptiles, or animals kept on the school premises? What precautions are taken to prevent them from escaping and causing injury or being injured?
- Does the school employ or contract for security guards? Are they armed or unarmed? How well trained are they?

*Sexual harassment*

Does the school have a clearly articulated policy prohibiting sexual harassment, intimidation, and discrimination by employees and students? Is there firm institutional commitment to this policy?

- Are allegations of sexual abuse or misconduct by faculty or staff members investigated consistently? Does the school have clear, established policies, worked out with the school's attorney, for handling such allegations?

*Special events*

Are carnivals, fairs, or bazaars operated under school auspices or on school property? Do the operators have adequate insurance? Is liability clearly established by contract?

*Student records*

Is the content of student files reviewed regularly and inappropriate material (psychological or diagnostic evaluations or other confidential material) removed from the files as necessary?

- Is access to files limited to those who have a legal right or professional need to consult them?

## *High-risk programs*

School programs classified as "high risk" activities do not necessarily result in a high incidence of bodily injury, but they do involve a greater risk of claims being made for damages, whether real or alleged. Because these activities involve greater than usual risk, administrators and trustees should take particular care in deciding whether to offer them, in overseeing and monitoring them, if offered, and in weighing the benefits of these activities in relation to their costs and risks.

Some activities and sports are particularly hazardous. Insurance companies have become reluctant to provide coverage for many of them because of the high potential for substantial damage awards. It is therefore important for schools that do offer these programs to operate them with special attention to the qualifications of instructors and program leaders, to their appropriateness to the skill and maturity level of student participants, and to the background, training, and experience of instructors. Often named as high-risk activities are

- Equestrian programs
- Football
- Hot air ballooning
- Mountain or rock climbing (involving hazardous conditions or rappelling)
- Pilot training
- Rafting
- Sailing
- Scuba diving
- Snow skiing

- Survival course
- Swimming
- Water skiing
- Wilderness experience

Certain special activities, or activities that involve particular ages or types of students, raise special risks. The questions that follow may help the school identify these risks and be aware of problems associated with them.

First, questions about programs for young children and after-school care.

- Does the school offer a day care or preschool program? If so, how is it supervised? What are the qualifications of staff that work with these students? What background checks are made of workers? How is the program monitored?
- Does the school have an extended day program? What after-school activities, clubs or programs does the school sponsor? Are these programs adequately monitored or supervised? Do supervisors, parents, and colleagues feel free to drop in and observe these programs?

Students who are "special" because they have special physical, emotional, or learning problems have special needs that schools may or may not be equipped to handle. Schools that do not have special programs for these students may be subject to allegations that they do not meet the needs of those who are admitted to the school. Schools that offer special programs for learning-disabled, dyslexic, emotionally disturbed, or physically handicapped students may be subject to allegations that their programs are inadequate or harmful. Any school can be subject to allegations that it does not measure up to its claims or is unsuitable for a particular child. Every school should consider the following questions and issues, and others as appropriate, in its risk assessment.

- Does the school accept students who have special needs? What provision does it make to meet the needs of learning-disabled students? Students needing remedial work? Dyslexic students? Students with emotional or behavior problems? Physically handicapped students? Students with other special problems?
- Admission officers sometimes consider as borderline candidates students whose academic record, background, or recommendations suggest that the school may not be the most appropriate environment for them. Do admission officers have administrative guidelines to follow when faced with such decisions? Are steps taken to inform parents about their children's chances for success at the school?
- Are teachers and others who work with students having special needs adequately trained to help these students?

Off-campus activities pose special problems for supervision, program administration, and safety. These programs are often an asset to the school and to students, but the liability issues involved need to be clearly understood by all concerned. When something goes wrong on an off-campus trip, the legal ramifications can be complex and serious. Some off-campus programs sponsored by teachers, perhaps in conjunction with an outside organization, may not be school programs covered by the school's liability insurance, yet the school may be held liable for damages suffered by participants because the school's administration inadvertently acted as if the programs were a school-sponsored program by permitting, or helping, teachers to promote the program at school.

- Does the school sponsor trips to foreign countries? Is the school's sponsorship (or lack thereof) clearly stated for faculty-chaperoned trips? How much responsibility does the school take to promote travel programs sponsored by faculty members?
- What other trips does the school sponsor or promote on behalf of faculty members? Senior class trips? Cultural trips? Theater trips? Athletic trips?
- Does the school sponsor an academic or educational program off campus, such as a Washington internship or a joint program with another school or a college?
- Do students go off campus for music lessons? Learning center activities? College visits? Educational or diagnostic testing? Driver education?

# 3.
# Insurance Policies and Coverages

The board of trustees, working with the school head and business officer, must determine how much insurance protection the school needs and how much risk the school can assume through self-insurance, higher deductibles, lower limits, and coinsurance.

## Selecting an insurance broker

The first step in buying insurance is to identify a broker who has solid knowledge of school insurance needs and can render service to the school. Selecting a broker is much the same as selecting any other specialist to perform services for the school. Frequently schools feel obliged to put their insurance coverage out to bid in order to spread the business to as many "friends of the school" as possible and to demonstrate proper buying techniques. This method often rewards brokers and agents who are not able to render adequate service to the school. Broker selection should be based on understanding of the school's particular insurance needs and the ability to work with more than one insurance market and one type of coverage.

An insurance broker's primary responsibility is to act on behalf of the school in submitting the school's insurance application to insurers. The broker is responsible for helping to prepare insurance applications; advising the school on necessary coverages; recommending appropriate deductibles and limits of coverage; and serving as an intermediary between the school and the insurer in negotiating prices. Other services include assistance in inspection, claims processing, providing materials that make employees aware of ways they can help reduce risk to themselves and to the school, gathering data, maintaining historical files and statistical data on the school's losses, and providing insurance certificates as necessary. The broker may serve as the resource person for these services or arrange for them to be provided by representatives of the insurer.

Most business officers and risk managers are more concerned with renewing existing insurance than with initiating or designing a new insurance program. With ever-changing risks faced by schools, the designated risk manager must make certain that all insurance policies are up to date and meet the risk actually faced, both in coverage and limits. Review of contracts and risks should be continuous and be the subject of regular conversations between the business manager and the school's broker. Changes in coverage should be made whenever they are needed, not necessarily when the coverage expires.

Renewal applications should be submitted sixty days in advance of policy expiration. Insurance

companies require adequate time for reviewing the school's application and for making underwriting decisions about pricing and risk. Furthermore, the school needs time, generally working with its broker, to negotiate prices and terms of coverage and to seek alternative coverage as necessary. At renewal time, several questions should be asked by the school's risk manager in conjunction with its insurance broker.

- What are the scope and limits of insurance coverages needed?
- What changes has the carrier made in coverage? Has the policy format been revised? Have exclusions been written into the policy? Have premiums been increased? Have higher deductibles been imposed, or limits reduced? Will all policies still work together well (primary and excess liability)?
- Does the school's loss experience justify the premiums?
- Can components of this coverage be provided better by another policy? Would this be less expensive than renewing a current policy?
- Are the broker and the insurer performing satisfactorily?
- Does the risk manager know and understand all of the school's risks, and can he or she apply them to the insurance coverage?
- Is there enough time for policy review so that coverage will not lapse before alternative steps can be taken?

Debate goes on among school business officers, and among brokers, about the wisdom of using a formal bidding process for insurance. On the one hand, putting insurance out to bid on a periodic basis, particularly in a competitive market, may keep the current broker or agent responsive to school needs, reduce costs, improve coverages, and even provide the opportunity for changing the school's agent or broker. On the other hand, putting insurance out to bid too frequently can lead to inadequate broker service, a focus on price at the expense of service, and weak broker-school relations, which can be detrimental to the school in the long run.

Whether through a "request for proposal" or a formal bidding procedure, the school needs to communicate its needs to insurers by preparing specifications that outline coverages and services needed. Generally specifications take the form of a *submission*, which contains the following elements.

- Introduction: description of the school
- General instructions for bids or quotes
- Services desired
- Criteria to be applied in selecting the agent, broker, and carrier
- Request for statement of qualifications by the insurer
- Method of premium payment requested
- Current safety and risk management programs of the school
- Loss history, particularly in the last three years
- Amount of coverage desired, including any alternatives the insurance company may propose, and desired retention levels
- Standard quotation form
- Deadline for submitting proposals and name and address of the person to whom they should be sent
- A statement of "reservation of rights" of the school to reject any and all quotations and to waive any informality (such as failure to follow specific instructions or to comply with a technical requirement that does not affect the substance of the bid). This avoids having to reject what may be the best bid because of a technical flaw in the quotation. Bid instructions should state whether or not alternative proposals recommended by the bidding insurer that may be more appropriate to the institution's needs will be considered. The instructions should make it clear that cost is not the sole criterion to be used in selecting a company or agent and that the contract will not necessarily be awarded to the lowest bidder.

Some large insurers do not pay commissions to brokers. Schools can negotiate with these "direct write" companies by omitting the broker and dealing directly with the insurance company or by using the broker as an intermediary and paying the broker a negotiated fee for services.

## Recent changes and trends

The most recent downturn in the insurance cycle

overwhelmed schools beginning in 1985. It manifested itself in several ways, but, simply stated, schools acquired less coverage for sharply higher prices. Schools (and colleges), while not the only segment of society to face major disruption of the insurance marketplace, were particularly hard hit because of a feeling on the part of insurers that courts were awarding high damages for accidents and injuries to children on an emotional, and therefore highly unpredictable, basis that was not related to real damages sustained. As the insurance market tightened up, school insurance was considered less desirable by carriers because it was so unpredictable and was therefore among the first market segments to be adversely affected when the marketplace rationed the supply of available insurance.

The insurance industry operates in cycles: the availability of insurance tightens and the price climbs, then it loosens and the price drops. Industry experts have predicted that the downturn in the most recent cycle will be deeper and longer lived than previous downturns, that its effects will be lasting, and that an insurance buyer's market will not happen in the foreseeable future. Still, as of mid-1987, some softening in the market was evident, and, while prices are not expected to decrease, the rate of increase should slow.

Independent schools have unwittingly contributed to their own plight in several ways. Independence is a barrier that has prevented schools from collaborating to develop cooperative alternatives. Schools have switched carriers on a lowest-bid basis, influenced by an industry that was competing fiercely on price and their own chronic concern over costs. It is no surprise, therefore, that carriers have reacted in kind, showing no particular loyalty to their school customers. Finally, a few schools have taken no action to reduce their risk exposures, have ignored recommendations from underwriters on life safety issues, and have failed to institute risk management plans.

In a survey of member schools in spring 1985, NAIS found that between 1984 and 1985, the price of liability insurance—standard liability coverage, umbrella (or excess coverage), and coverage for officers and trustees—had increased, on the average, by 300 per cent. Increases of 500 to 1,000 per cent were reported. Higher premiums were purchasing less insurance. Insurers inserted exclusions that reduced coverage, lowered the ceiling limits on their liability—particularly for umbrella coverage—raised existing deductibles and introduced new ones, and added new coinsurance clauses. Until recently, insurance premiums were less than 1 per cent of the typical school operating budget. At the time of the survey, insurance costs had risen to as much as 2.5 per cent of the operating budget in some schools.

Although price increases have had a heavy impact on operating budgets, some schools have faced a more serious problem: they have been unable to obtain adequate coverage regardless of cost. Schools have had policies canceled and been unable to locate another carrier. Insurance that protects officers and directors against personal liability for errors and omissions has been especially difficult to find. Justifiably alarmed trustees have occasionally resigned to avoid the risk of being sued without adequate insurance. Many schools have reported new exclusions from their liability coverage. Most common: athletics or interscholastic competition, rock climbing and survival programs, physical and sexual abuse, and environmental hazards—asbestos, discharges from science laboratories and sewage treatment plants, and leaks from oil and gasoline storage tanks.

Schools should look carefully at exclusions written into their policies; some may have direct bearing on programs that the school offers. Schools should be wary of continuing to offer programs that are not adequately insured because that may expose them to serious risk.

Schools should watch for higher deductibles and lower ceiling limits on coverage. It is especially important to spot gaps between primary coverage and umbrella, or excess, coverage. For example, assume that a school's limit on primary coverage is reduced from $1,000,000 to $500,000, and its umbrella coverage is excess of $1,000,000. If a claimant is awarded $1,200,000 in damages, the school is insured for $500,000 under its primary coverage and for $200,000 under its umbrella coverage, leaving an uninsured gap of $500,000.

Many insurers are changing from "occurrence" to "claims made" policy forms. Occurrence forms

cover incidents that happen while the policy is in force, even though the claims might not be filed until years later. The new claims-made forms cover only claims filed during the policy period for incidents that occur while the policy is in effect. With the new form, insurance companies are attempting to cut off what they call the "long tail" of claims or suits filed years after an injury or exposure occurred, as is currently the case with asbestos claims for exposures that happened twenty or more years ago.

The claims-made form poses special problems for schools. Parents may choose not to file a claim against a school for their child's injury, but the child has a right to sue when he or she reaches majority. In addition, the statute of limitations applies from the time the child reaches majority—which is a fairly long period for an insurer to be open to suits. The new form will cause problems in the future for schools that shift to another carrier, because gaps in coverage could occur without careful arrangements, including "buying the tail" (paying an additional premium for an extension of time for reporting claims for incidents that have already occurred) from the current carrier.

Fortunately the claims-made policy form is not as widespread now as was anticipated, but some insurance carriers are using it, and its use could increase. Such policies should be avoided, if possible, because they will lead to future problems for schools that do not understand how they work or how to defend themselves against gaps in coverage that result from shifting insurance carriers. A claims-made policy can sometimes be extended backward to a *retroactive date* (for additional premium) to cover incidents that occurred prior to the *inception date* and can also be extended forward (for additional premium) for an *extended discovery* period that allows additional time for claims to be made after the policy has expired. Because a claims-made policy renewal is usually retroactive to the inception date of the first claims-made policy issued by the current company, the problem of coverage gaps does not arise until the school shifts carriers. A claims-made policy can be an expensive and troublesome problem for a school that has no alternative to using it.

## Risk pooling

A troublesome insurance market requires schools to consider alternatives to going without insurance or paying high premiums for reduced insurance protection. Three options to consider are individual self-insurance programs, captive insurance companies, and risk-pooling trusts.

Individual self-insurance for major areas of risk is not a workable option for individual schools because they ordinarily do not have the spread of risk to predict loss or the financial independence needed to fund such a program properly. A captive insurer (an insurance company created and owned by a small group of related corporations to insure its creators) may not be feasible because of the large amount of capital needed. One option that can be considered seriously, however, is a risk-pooling trust, which can be established under a special Illinois law.

In 1977 the Illinois legislature passed an act called the Religious and Charitable Risk Pooling Trust Act in response to requests for help by various charitable organizations, including the United Way, to find an alternative method of managing their risks. This act specifically authorizes the establishment of risk-sharing pools.

The concept of a risk-sharing pool is relatively simple. Participants make contributions to the pool and share in one another's losses. If losses are lower than contributions, participants share in this "profit," usually in the form of lower contributions or as dividends.

A pool established under this Illinois law requires that all participants in the pool be not-for-profit organizations as defined by section 501(c)(3) of the Internal Revenue Code. Because participants are not required to be located in Illinois, pools may be regional or national.

Risk-sharing pools have certain advantages over traditional insurance.

- Pool participants collectively retain the funds they have contributed and are able to benefit from investment income earned from these funds.
- Costs are usually lower than those that would be charged by an insurance company providing similar coverage. This reduced expense is passed on to pool participants in the form of lower premiums or as pool dividends.

- The pool can set its own rates and determine what type of coverage to offer. Coverage can be broader than what is available commercially. But, to keep the pool properly funded, rates do need to be set at an adequate level.
- In addition to savings realized initially in the form of reduced cost of coverage, a pool having a good experience can produce dividends for pool members. In one pool, contributions collected over seven years produced a fund large enough to encourage the trustees of the pool to think about no longer requiring contributions from long-term participants and charging minimal maintenance fees to handle administrative expenses.
- Generally the pool pays losses from its reserves, but should commercial insurance become less expensive and more readily available, the pool might be able to purchase reinsurance as a group and take advantage of favorable insurance market conditions.

Participants buy coverage from the pool in the same way they would purchase insurance commercially.

The trustees of the pool determine how much of the risk it will retain and may decide, especially in the early stages of the trust, to purchase excess insurance to cover unexpected high losses. This excess insurance diminishes in importance and in size as the funds held by the pool grow.

A risk-pooling trust provides both a short-term solution to current adverse insurance conditions and a long-term alternative to future insurance industry instabilities.

### *Risk retention groups*

In response to the most recent lack of adequate commercial insurance coverage, Congress passed the Liability Risk Retention Act of 1986. The act authorizes the establishment and operation of risk retention groups, which are special-purpose insurance companies that insure specific industries, lines of business, or groups of related businesses that have similar or related liability exposures. A risk retention group is owned by its members, each of whom is insured by the group. Risk retention groups function very much like mutual insurance companies. Once chartered in any state, a risk retention group may operate freely in all states. It may also solicit and service business in all states, which eliminates the need for a "fronting company." A risk retention group is exempt from state laws requiring participation in or receipt of benefits from state guaranty or solvency funds.

While risk retention groups are exempt from many state insurance laws, they are subject to some regulations and requirements. Risk retention groups may be required to pay premium taxes, participate in assigned risk pools, comply with fair claim settlement practices laws, comply with state laws regarding deceptive or fraudulent acts or practices, and submit copies of audited financial statements.

The advantage to educational institutions of a risk retention group is great. Schools have similar programs, activities, and liability exposures. A risk retention group can meet the liability insurance needs of independent schools because, as a mutual company owned by its members, it can determine the coverages and limits that schools want and need. Group members also control pricing, so, while premiums charged must be adequate for the coverage offered, members can be assured that the premiums they are paying are not excessive and are not being used to subsidize losses in other lines of business.

### *Purchasing groups*

The Liability Risk Retention Act also permits the establishment of purchasing groups for the purpose of buying liability insurance as a group for members of the group. Purchasing groups are exempt from state laws that (1) prohibit their establishment, (2) prohibit purchase of insurance on a group basis because the group has not existed for a minimum time, (3) limit ownership or specify membership requirements, (4) regulate forms and rating practices, and (5) prohibit discounted rates. A purchasing group must register with the insurance regulators in each state in which it intends to do business and furnish insurance regulators with notification of its domicile, lines of insurance it intends to purchase, and the name and domicile of the insurer providing coverage.

State and regional associations of schools, or

groups of similarly situated schools, may now buy liability insurance on a group basis for their members.

## Policy coverages

While independent schools vary in size, grade structure, educational philosophy, and student mix, one thing they all have in common is a set of exposures to risk that must be protected by a carefully designed insurance program. Physical structures should be covered under broad property damage coverage, as should liability exposures. Each program should consist of as many policies as are necessary to avoid large, uninsured exposures.

Insurance policies, their language, their coverage, and their typical exclusions and peculiarities differ with the type of coverage each affords. While it is not the intent of this manual to recommend a specific program of insurance for each school, the following discussion of coverages does give some general recommendations for types of coverage and policy options to be considered by those in the school who are charged with establishing and maintaining a program of insurance protection.

### *Multi-peril/property*

For the broadest property protection available, school property insurance should be include the following provisions.

- *On an "all risk" basis.* "All risk," which refers to the causes of loss covered, is a misnomer because the policy does contain exclusions. Typical exclusions under the all-risk property form include earthquake, earth movement, and flood and surface water perils. These exclusions may be covered by a DIC (difference in conditions) policy or other special property policies if desired. Earthquake coverage is generally available except in earthquake-prone areas—just where it is most likely to be needed. Flood insurance is available under a program sponsored by the federal government.
- *On a replacement cost basis.* A replacement cost provision is important because it provides coverage for the full cost of repair or replacement without deduction for depreciation. In the absence of this provision, reimbursement for the depreciated value of school property could result in a substantial loss retained by the school.
- *With a blanket limit applying to all buildings and contents.* Determining the value of physical assets at a given point in time is not a exact science and, even when done precisely, rapidly becomes outdated because of changing economic conditions. Therefore, schools are urged to insure their property on a blanket basis to maintain a hedge against inflation and possible valuation errors. The blanket limit applies to all physical assets and guards against value discrepancies.
- *On an agreed-amount basis.* An agreed-amount endorsement can be purchased as an amendment to the policy to keep the school from having to share a loss as a coinsurer when a property loss occurs. For this reason, it is recommended that this endorsement be included in every school's insurance program. Agreed-amount endorsements are written for one year at a time, even when they are attached to a three-year policy.

### *Miscellaneous property*

Many schools have bleachers, announcing booths, sheds, refreshment stands, and other such structures on the premises. These items are sometimes overlooked when an appraisal is made and consequently are omitted from the statement of values. The statement of values should always be reviewed carefully to make sure that it includes all school property that should be insured.

### *Property deductibles*

Higher deductibles can result in savings on premiums. The cost of deductibles should be judged by comparing premium savings with expected retained losses. Maintaining complete records of incidents and losses can help the school monitor deductibles and determine when an adjustment should be made in its retention level.

### *Selecting proper deductible levels*

When pricing deductibles on a given limit of property insurance, companies normally apply credits to the various manual rates for basic causes of loss. Deductible-credit tables are constructed so that "percentage of savings" increments diminish as levels of retention (that is, amount of risk assumed by the school) increase. Therefore, unless the school is paying a substantial insurance premium, it is not cost-efficient to accept a deductible beyond a certain level. Here is a typical table.

| *Deductible level* | *Premium credit* |
|---|---|
| | Standard deductible—no credit |
| $ 100 | |
| $ 500 | 12% |
| $ 1,000 | 18% |
| $ 5,000 | 22% |
| $10,000 | 25% |

Increasing retention by $400 (from $100 to $500) results in a 12 per cent credit on the premium charge for a given amount of coverage, but an increase of $5,000 in retention (from $5,000 to $10,000) results in premium savings of only 3 per cent (from 22% to 25%).

Which deductible level is usually best? In general, based on the average loss experience of most schools, a $1,000 deductible results in the greatest premium savings. Of course, if a school has much higher or lower insurance costs than the average, or has a poor loss record, the $1,000 deductible may not be best.

Policies vary widely in the way the deductible is applied to a loss and thus produce quite different results. Here are three variations.

- *Per occurrence.* The deductible applies to each loss-causing incident—to each loss caused by each of several fires, for instance.
- *Per location.* The deductible applies separately to each building including its contents, to contents in uninsured buildings, and to property in the open.
- *Per item.* The deductible applies to each item described individually in the policy.

The best application is the per occurrence deductible because it makes it possible for the school to avoid paying multiple deductibles if several locations or items are damaged due to a single cause.

### *Extra-expense insurance*

Extra-expense insurance provides the additional money required to maintain school operations following a major loss to facilities caused by an insured peril. A school cannot afford to cease operations for any length of time. Therefore, if a school building is destroyed or rendered unusable, extra expense is usually involved in maintaining operations until repairs are made—renting temporary substitute facilities, or busing students to alternate facilities. Extra-expense insurance pays the difference between normal expenses and the additional expense required to maintain operations.

In order to establish adequate limits of liability for extra-expense insurance, the school needs to develop emergency plans (see Chapter 4). Once these plans have been established, the cost of implementing them can then be estimated. The limit of liability should be based on this cost minus normal operating expenses.

### *Tuition fees protection endorsement*

A tuition fees protection endorsement extends basic property coverage to insure against loss of tuition fees resulting directly from damage to or destruction of school property by insured perils. The amount of recovery under this form is based on the amount of actual loss of tuition fees sustained minus charges and expenses that would not continue during the time the school is unable to conduct normal operations. Usually this coverage is subject to a contribution (coinsurance) clause of 80 per cent.

### *Comprehensive crime coverage*

A popular endorsement, comprehensive crime coverage packages five crime coverages so that the insured may choose among options and individual limits of liability. These coverages are as follows.

- *Employee dishonesty coverage* provides protection against loss of money, securities, and property resulting from fraudulent or dishonest acts of an employee. This exposure also can be covered by a faithful performance bond, which indemnifies (protects) the insured from losses resulting from negligent as well as criminal acts of an employee. Employee dishonesty coverage is offered in two forms that differ only in limit of liability. The first applies the limit of liability regardless of how many employees were involved in the dishonest act. The second applies the limit to each employee involved in the crime.
- *Money and securities loss on and off the premises* provides a virtually all-risk coverage of money and securities plus limited protection on other property. It applies to practically every loss except loss as a result of fraudulent, dishonest, or criminal acts of employees; accounting errors; and war or nuclear reaction. With adequate loss prevention techniques, this exposure can be left uninsured. Money and securities should be kept in a locked compartment or safe while stored on school premises. Money should be periodically deposited in the bank and not allowed to accumulate at the school.
- *Money orders and counterfeit paper currency* coverage insures against loss due to acceptance in good faith of counterfeit currency or money orders. The extreme unlikelihood of this kind of loss occurring in a school dictates leaving this exposure uninsured.
- *Depositors forgery coverage* protects against loss sustained through forgery or alteration of a check, draft, or other written promise or negotiable instrument drawn on the account of the insured. Strict loss prevention and internal control measures are recommended in lieu of such coverage.
- *Mercantile open stock burglary and theft endorsement* provides protection for loss from burglary or theft, including theft by a watchman. "Burglary" is loss of contents through stealing, but only when a building is not open for business and visible signs of forced entry on the exterior of the building are found. "Theft" provides protection for loss by theft whether or not the premises are open for business and includes any act of stealing or taking another's property. A primary exclusion under this insurance is loss due to any fraudulent, dishonest, or criminal act by any insured or an employee or officer of the insured.

Protection against theft is also covered under the special multi-peril all-risk property form provided by many insurers. While the theft coverage provided by the mercantile open stock endorsement may be used to reduce the deductible as it applies to losses from theft, this reduction may not be worth the additional premium cost involved.

Because a school's actual exposure to burglary or theft is loss of building contents, the likelihood of a catastrophic loss through burglary or theft is remote. Ordinarily it is neither necessary nor practical for a school to insure these risks; a good loss prevention program is a more realistic approach. Basic techniques such as unscheduled police patrols of school premises and locked storage areas containing valuable equipment should be effective deterrents to crime. Using a watchman (who may have other duties) or twenty-four-hour janitorial service is another effective control measure.

## *Floater policies*

Various equipment floater policies are available to cover movable items such as cameras, audio-visual equipment, musical instruments, and other portable items. Floater policies generally provide broad coverage because they insure all risks of loss subject to only a few exclusions, as stated in policies. Under these floaters, the most important extensions of coverage over basic coverage for general property are theft and off-premises protection. These coverages are of marginal value in a school's insurance program. The risk manager should evaluate the following factors when determining the necessity of floater coverage.

- Loss control measures, including common sense, can substantially reduce loss of equipment, which should be kept in a locked storage area when not in use and monitored while in use. When equipment is being transported, it should be kept in a locked compartment whenever practical and someone should be designated to see to its safekeeping.

- The risk manager should try to think of the most severe theft or off-premises equipment loss that could be incurred in a single instance. For example, if the school band gives many concerts away from the premises, a large single off-premises loss could make self-insurance not feasible.
- Floater policies are "actual cash value" contracts, meaning that loss settlements are based on depreciated values. If items that can be covered under floater policies are added to the statement of values, they are afforded the same on-premises protection as the rest of general property, which is written on a replacement cost basis.
- Most floater policies are written on the basis of 80-100 per cent coinsurance, which results in a penalty at the time of loss if the school is not insured to full value. If property that can be covered under a floater policy is added to the statement of values, the agreed-amount endorsement and the blanket limit both apply. Both of these extensions of coverage significantly reduce the possibility of a loss because of inadequate coverage.

The essential judgment to make when evaluating the need for floater coverage is to determine the significance of theft and off-premises exposures. If these exposures are inconsequential, floater coverage is not necessary.

## *Comprehensive general liability insurance*

Comprehensive general liability insurance provides public liability protection for all premises and operations exposures whether they are named on the policy or not. Although this coverage is broad, it is not "all risk" because it does include several exclusions, some of which can be written back into the policy by "endorsement." Here are some typical endorsements and "extensions" of coverage that the school should consider.

- Personal injury liability. Personal injury covers liability for such offenses as libel, slander, false arrest, invasion of privacy or wrongful entry, and eviction.
- Additional insureds. The statutes of many states either permit or require schools to protect ("indemnify") members of the board of trustees, administrators, teachers, and other employees from financial loss arising out of any negligence claim relating to their employment or duties. The "college and school endorsement" affords these people "additional insureds" status. Legislation of some states requires that school volunteers be given this same protection.
- Corporal punishment. Special coverage endorsements are available to provide protection for members of a school's teaching staff against liability arising out of claims of corporal punishment in connection with student discipline.
- *Employee benefits.* Employers face exposure to "errors and omissions"—in employee benefits, for example, for misstating expected benefits to an employee or failing to advise the employee about insurance conversion rights at termination. Coverage is available for this type of exposure under an "errors and omissions" endorsement.
- *Contractual liability.* Standard liability forms afford limited coverage for contractual liability. Specifically, they cover legal obligations for bodily injury or property damage arising from incidental contracts (for example, to indemnify a skating rink for its losses incidental to the school's use of the rink pursuant to a standard daily rental agreement). This limited coverage leaves a broad range of possible contractual obligations uncovered. For this reason, the school should purchase "blanket contractual liability" coverage. As mentioned above under the heading of "transferring risk," basic protection for this exposure involves having an attorney review all contracts. Because it is impossible to avoid all contractual obligations, blanket contractual liability insurance is a virtual necessity for schools.
- *Incidental malpractice.* The school should maintain coverage for secondary liability arising out of actions of any medical professionals employed by the school. Coverage of this type normally extends to providing medical services or medication to students and is included on the college and school endorsement.
- *Limited worldwide liability.* Coverage should include protection against liability for bodily injury or property damage anywhere in the world as long as suit is brought in the United States.

### *Trustee liability insurance*

Most of the serious claims made against schools are for alleged acts of negligence resulting in personal injury claimed against the school and its employees or agents and are covered by the school's general liability policy. Trustee liability insurance, like officers' and directors' insurance in a business corporation, protects trustees individually and collectively against claims made against them for "wrongful acts" in the course of performing their duties as trustees. This insurance became much less available and much more expensive as of mid-1986.

While the exposure of trustees should not be underestimated, as a practical matter trustee exposure to loss is more potential than real. Relatively few claims are made against independent school trustees; those that are allege wrongful dismissal (usually of the head of the school), violation of contract, or age and sex discrimination.

Several points to keep in mind about trustee liability are that (1) legal costs in defending against a claim, even a claim without merit, can be substantial; (2) some claims are settled to avoid a judgment; and (3) trustee liability insurance generally does not protect against libel or slander, personal profit to which a trustee is not legally entitled, or dishonesty.

Trustees are urged to review their legal responsibility and liability with their school's attorney and to review the school's liability insurance, especially the trustee liability policy, in the light of that responsibility. The Association of Governing Boards, an umbrella organization for college trustees, suggests that trustees look to the protection afforded by the statutes, existing in most states, that allow indemnification by their institutions. Even though state indemnification statutes do exist, however, the protection accorded varies widely from state to state. Trustees should acquaint themselves with the protection available in their own jurisdictions.

The following questions can help schools and their trustees determine steps for boards to take to establish greater protection for trustees against the risks inherent in their position.

1. Does this state have an indemnification statute that allows the institution to protect trustees against claims or actions?
2. If such a statute exists, does the law specify that the institution must indemnify its governing board, or is that left up to the institution?
3. If the protection is discretionary, does the indemnification law require some prior or formal act of the board, such as adoption of a bylaw provision specifying that indemnification *shall* be invoked on behalf of the institution?
4. If such formal action is necessary, has the board taken appropriate action to fulfill this requirement so that the protection now applies?
5. Does the protection call for reimbursement of expenses incurred or losses suffered, or does it call for payment of such expenses directly by the institution as they arise?
6. Is indemnification provided for matters threatened, or only for pending or completed actions?
7. In what situations may a trustee look to the institution for reimbursement or payment? A civil matter? A criminal suit? An administrative charge? An investigative charge?
8. If the situation would otherwise call for reimbursement or payment by the institution, what is the effect of a conviction or a plea of *nolo contendere* by the trustee or officer in a criminal case?
9. Do any other conditions exist for seeking reimbursement or payment from the institution? In other words, is "good faith" or "reasonable belief" required on the part of trustees in order to "qualify" for reimbursement?
10. What items are and are not covered by the indemnification clause—counsel's fees? Judgments? Fines? Amounts paid or owed for settlements reached in order to release trustees from further action?

Finding answers to these questions, and putting into place bylaw provisions and procedures to protect trustees, still may not reassure members of governing boards, given the limited financial resources of many institutions today. Insuring against the risk of ultimate liability and against the rapidly escalating cost of legal defense may be the only realistic means of protecting the institution and its trustees adequately from serious financial consequences.

Several states have passed legislation that limits the personal liability of trustees of not-for-profit entities, but it would be a mistake to assume that it negates the need for trustee liability insurance. The practical effect of those laws is to protect trustees personally and to shift liability to the school itself.

### *Umbrella or excess liability policy*

An umbrella, or excess liability, policy serves several useful functions. It provides higher limits than are available in an underlying primary general liability policy, it can raise the limits on several different underlying policies simultaneously, and it can fill gaps in underlying policies. Basic school general liability policies typically have a $1,000,000 underlying limit. School automobile policies typically have a $500,000 limit. An umbrella policy is designed to raise these limits of coverage (in multiples of $1,000,000 or $5,000,000) to the amount desired. The minimum liability that a school should carry is $5,000,000. Many schools should carry $10,000,000 or more in excess coverage.

Some umbrella policies are designed as "all risk of loss" liability policies and fill gaps, or exclusions, in any underlying policy, frequently with a self-insured retention (or deductible) of $10,000 or more. In the event that an underlying policy has an unwelcome exclusion, some umbrella carriers may be willing to negotiate coverage to fill that gap. Other umbrella policies, designed to "follow form," exclude coverages that are also excluded in the underlying policy. It is particularly important that the umbrella policy fit well with the school's underlying primary policies.

### *Automobile insurance*

Automobile liability insurance is mandated by law and should be maintained on all school-owned vehicles. The school's policy should be written on a comprehensive basis for bodily injury and property damage. Comprehensive auto liability coverage is recommended because it covers all owned vehicles, hired or borrowed vehicles, and vehicles owned by employees when used for school business.

Certain standard endorsements to the liability policy should be considered.

- *Hired or borrowed automobile liability.* A potential for loss exists when a school contracts for commercial transportation of students rather than operating its own fleet of vehicles or when a vehicle is borrowed from someone other than an employee. Without this endorsement, the only liability coverage available is the coverage that the owner of the hired or borrowed automobile has, and the school may be held liable for judgments in excess of the owner's policy.
- *Employer's nonownership liability.* This endorsement provides protection for the school when employees operate their own automobiles on behalf of the school for school business.
- *No-fault coverage.* This endorsement, required in many states, is referred to as basic reparations or personal injury protection. Generally, no-fault coverage provides benefits for economic loss (medical expense, income loss, other specified expenses) to persons who sustain injury resulting from the operation of an insured vehicle, regardless of who is responsible for the injury. The kinds of benefits, amount of protection, and persons and vehicles covered vary according to the plan adopted by the state. Differences also exist among the states as to benefits available within the state.
- *Automobile medical payments.* This coverage provides payment of reasonable expenses for necessary medical services to persons who sustain bodily injury caused by an accident while occupying an insured motor vehicle. It does not apply to loss covered by workers' compensation benefits. The need for this coverage should be evaluated according to the use and occupancy of school vehicles.
- *Physical damage.* Physical damage insurance protects against loss to vehicles. *Comprehensive* coverage responds to accidental loss or damage from a broad range of perils. It pays for loss from any cause except collision or overturn of the vehicle. The payment for loss is based on the lesser of the actual *cost of repairs* or the *actual cash value* of the vehicle at the time of loss. *Collision* coverage protects against accidental loss to an insured vehicle caused by collision with another

object or overturn of the vehicle. As with other forms of property insurance, automobile physical damage is most often written with a deductible. The guidelines suggested above for selecting a deductible for other property exposures may also be followed for automobile insurance.

### *EDP (electronic data processing) policy*

In identifying the school's exposure to computer-related losses, three areas of concern need to be addressed: physical damage to the computer itself, loss or damage to information stored, and the extra expense involved in replacing lost or destroyed information.

Four types of coverage are available under an EDP (electronic data processing) policy: equipment, media, extra expense, and business interruption. The EDP policy was developed to provide "all risk" protection and cover losses arising from EDP exposures that are not covered or are subject to severe limitations under conventional property forms. There is no standard EDP policy; in selecting one, the school should be certain that the coverage it provides meets the school's needs. Here is a summary of typical EDP form coverages.

- *Equipment.* Protects equipment and its component parts; all-risk coverage subject to specific exclusion is available. Ideally, the only exclusions applying to coverage for equipment should be war risks and wear and tear. Equipment can include owned or leased components.
- *Media.* Covers all forms of data storage media and costs of data reproduction. If it is necessary to amend or delete policy exclusions, the school should make sure that these amendments apply to all coverages, including media.
- *Extra expense.* Provides additional funds needed to continue normal operations when data processing facilities are damaged, whether by loss of air conditioning, or damage to electrical systems by insured perils.
- *Business interruption.* Covers loss of income and continuing expenses when operations are interrupted because of damage to equipment or media from an insured peril.

### *Boiler and machinery insurance*

Boiler and machinery insurance provides protection for loss resulting from the explosion or breakdown of boilers or machinery. Standard provisions allow for six forms of coverage, with all but one being mandatory. These coverages, applying in sequence, are

- *Loss to property of the insured.* Covers damage to the insured equipment as well as damage to other property owned by the insured.
- *Expediting expenses.* Reimburses the insured for reasonable costs incurred in making the best possible repairs to damaged property.
- *Liability for property of others.* Defends the insured against claims and pays for liability for damage to property of others caused by an insured accident.
- *Bodily injury liability (optional).* Covers and defends the insured against bodily injury to persons caused by an insured accident. This coverage also includes reimbursement for first aid relief given at the time of an accident.
- *Defense, settlement, and supplementary payments.* Covers the cost of defending liability claims.
- *Automatic coverage.* Provides protection for newly acquired equipment for ninety days.

Boiler and machinery coverage should be written on a "broad form" basis, with repair or replacement protection. Because substantial losses can result from the explosion of a boiler, it is recommended that coverage be at least 20 to 25 per cent of the value of the largest related single building, including contents.

Two endorsements may be relevant to some schools.

- *Extra expense: boiler.* This coverage provides funds for the additional cost of operating a school when a boiler is damaged by a covered peril and replacement boilers and repairs are not readily obtainable. This additional expense may include heat, light, rent, and the cost of moving to temporary quarters.
- *Explosion elimination endorsement.* When added to a boiler policy, this endorsement excludes coverage under "loss to property of the insured—expediting expense and liability for property of

others" sections for loss to any of the following caused by explosion.

Any fired vessel other than a steam boiler

Any unfired vessel other than an electric steam generator

Any piping other than steam piping

Refrigerating and air conditioning vessels and piping

The purpose of this endorsement is to avoid duplication of coverage under fire and extended coverage insurance provided by a special multiperil policy. A premium credit is given for using this endorsement.

### *Workers' compensation*

Workers' compensation coverage is governed by law, and all polices are required to meet the obligations imposed under the compensation laws of each state. Individual state laws vary, but a standard workers' compensation policy is available for use throughout the country. It includes the following two coverages.

- *Workers' compensation.* This coverage requires the insurance carrier to pay all benefits due an injured employee as specified by the workers' compensation law. Although there is no maximum limit of liability, statutory benefits are specified.
- *Employers' liability.* Protects the insured against legal liability for injury sustained by employees in the course of their employment. This coverage is separate and distinct from any claim for workers' compensation benefits.

In addition to the standard policy, it is recommended that the school's policy include "other states coverage," which applies when an an employee is injured while on business in another state (transporting students on a class trip, traveling for the admission office, attending a conference) and the employee brings suit under the broader compensation laws of that state. The employee is normally covered under the compensation law of the state in which the employer's operations are located, but another state may allow suit under its law. Other states coverage provides additional protection for this potential exposure.

Another insuring agreement that can be incorporated into the worker's compensation policy is the "voluntary compensation endorsement," which provides workers' compensation benefits to employees who are not eligible for coverage under the law of a particular state or whose status under the law may be uncertain. When this endorsement is included in the policy, the insurance carrier agrees to provide the benefits of the compensation law of the state specified in the endorsement just as if the injured employee had been subject to that compensation law.

## Coping with uninsurable risks

Certain risks, such as earthquakes, asbestos, and hazardous waste, present special problems. Earthquake insurance coverage limits have decreased significantly over past levels, with enormous price increases. For example, one California school had been carrying a $5,000,000 policy to protect a physical plant whose replacement value was approximately $20,000,000. The maximum coverage available at renewal was $1,000,000, with a twelvefold increase in the premium rate. The school determined that, in the event of a major loss, this coverage would be insignificant; if it encountered a loss of $1,000,000, it could recover. The remaining decision was whether the probability of loss was sufficient to justify the premium for such minimal coverage. This insurance as it stood no longer provided catastrophe coverage and was therefore not as valuable to the school.

Hazardous waste coverage has virtually disappeared from the insurance market. Losses in this area are unpredictable and will remain so until the courts are more predictable in their decisions. The producer or owner of hazardous waste materials is usually held liable for any pollution from that material even after it has been properly disposed of by a waste management firm. This means that schools remain liable for the waste products of their laboratories and auto shops. These wastes are typically small in quantity but large in variety. Since coverage is essentially unavailable, this risk must be minimized by careful identification and control of these waste products.

# 4.
# Establishing a Risk Management Program

Every school needs a risk management, or loss control, program. Its scope will depend on the size and complexity of the school. The easiest way to start is by taking one step at a time until all the important components of the program are in place. This takes time and money, but both are well spent if the result is fewer injuries to students and staff and lower insurance premiums. Loss control activities should be routinely included in the budget. A good rule of thumb is to budget for the program about 10 per cent of what the school pays each year in insurance premiums. Because a well-run loss control program usually leads to stabilization or reduction of insurance premiums, it should be considered an expense of doing business.

## An effective program

An effective loss control program involves the following components and activities.

1. An initial institutional assessment not only determines risk to which the school is exposed but also uncovers specific deficiencies and safety problems in facilities and programs that should be remedied.

2. Once initial inspection of the facilities has been conducted, using the guide for institutional assessment given in Chapter 2 as a starting point, the school should institute a continuous program of inspecting facilities and identifying areas that need attention. Local fire departments, health departments, building inspectors, and other professionals can be asked to help the school assess the safety of its facilities and to recommend remedial action. Use of local resources, not only a cost-effective way of gaining competent technical help, is also good public relations that demonstrates the school's willingness to comply with reasonable recommendations made by local health and safety officials.

3. Once problems have been identified, corrective action must be taken. Some programs and policies may need to be modified, maintenance procedures undertaken, and smoke and heat detectors and direct alarms installed. However, certain forms of corrective action may require careful planning, modification of facilities, acquisition of expensive equipment, and significant expenditures. The school's administrators and trustees need to realize the danger of delaying safety projects from year to year, even with the best of intentions, as other projects compete for time and money.

4. A legal audit is an essential part of a loss control program. An attorney should be retained to review school publications (admission materials, advertising, guidance materials) for direct or implied promises that could become contrac-

tual obligations, as well as files, contracts, handbooks, appointment letters, and operational procedures. A statement as simple as "Our students get into good colleges" has been held to be a contractual promise, the breach of which could subject a school to damages.

5. A key element of an effective loss control program is immediate reporting of incidents or events so that they may be promptly investigated and facts and circumstances documented, recorded, and properly handled from that point forward. The school should have a policy that requires employees at all levels to prepare a report when they witness an incident or an incident occurs in their areas of responsibility.

6. The school's designated risk manager should accumulate incident reports, determine which incidents might result in claims and need to be reported to the insurance carrier (in consultation with the school's attorney), and fill out insurance company reports as expeditiously as possible. Failure to report occurrences, events, or incidents promptly can impair coverage for a specific incident or resulting claim. Insurance carriers occasionally send letters reserving the right not to cover a risk when they do not receive the kind of notification a particular policy requires.

7. Once an incident report has been received and action taken, analysis is needed to identify possible problem areas and to measure the effectiveness of changes in school policies and procedures. Incident analyses may prove useful, at least in larger schools where the number of incidents may be significant, in demonstrating to the school's underwriters that it has an active loss control program in place. That kind of assurance to an underwriter can have a positive effect on the availability and the cost of insurance to the school.

8. All school employees should be made aware of safety issues and educated to a sense of responsibility for safety and loss control. Concern about safety practices on the part of key administrators has far more influence on the staff than memorandums and safety handbooks.

9. A loss control program cannot function without clear guidelines and policies. The school's safety policy and procedures should be set out in employment handbooks or policy manuals.

10. At least once a year, and more frequently as circumstances warrant, the designated risk manager should review and evaluate the school's risk management and safety program to determine how well it is working. An annual written report to the board of trustees on the school's safety program can go a long way in making the school aware of its progress, or lack of progress, during the year. The school should consider making such a report standard reading for trustees.

## When an accident occurs

Despite our best efforts, accidents and incidents that result in claims against the school do happen. Specific steps can be taken to reduce the negative impact of an incident and even allow the school to recoup some value from it.

- Take whatever emergency steps are necessary to prevent further injury or damage.
- Investigate the incident, interview witnesses, and record details while memories are fresh.
- Notify the school's insurance carrier, usually through the school's agent or broker, and file the required forms.
- Determine the cause of the incident so that corrective action may be taken before other injuries, damage, or problems.
- Keep track of even minor incidents to see whether a pattern of incidents may indicate the potential for more serious incidents.
- Take corrective action, including staff training, as necessary.

An essential element of any loss control program is safety engineering. A percentage of each insurance premium dollar pays for loss control engineering services provided by the school's insurance carrier. These services generally benefit both the carrier and the insured. It is important for the school to evaluate the effectiveness of the loss engineering services their insurance carriers provide. This evaluation should include the availability and frequency of service, the number of recommendations made by the loss engineers, the willingness to provide the school with written recommendations, and the availability of the carrier's loss engineers in helping the school develop a safety program.

## Contingency planning for emergencies

No matter how careful and complete, a safety program cannot forestall all emergencies. Fires, extreme weather conditions, bomb threats, earthquakes, explosions, bus accidents, and power failures will occur, disrupting the school, endangering the lives of faculty and students, and causing potentially severe damage to valuable school property.

When a disaster or other emergency occurs, decisions have to be made calmly and rationally to minimize loss, preserve property, and enable the school to resume normal operations as soon as possible. A well-drawn contingency plan will enable school personnel to react effectively in an emergency. A contingency plan should include the following components.

- A coordinator to develop and administer contingency plans should be designated.
- Written procedures and detailed plans should be in place for responding to each type of emergency situation the school can reasonably anticipate, such as fire (particularly in a dormitory at night), laboratory explosion or chemical burn, drowning accident, natural calamity (earthquake, hurricane, tornado, flood), a school bus accident, rape or molestation, kidnapping (or disappearance) of a student, poisoning, drug overdose, suicide attempt.
- Separate plans, as needed, should be in place for emergency services (ambulance, rescue squad, fire, police, poison control, marine rescue, civil defense), protection of important records (financial, personnel, student), evacuation of buildings or the campus itself, and rescue or other emergency equipment.
- Immediate communication to key personnel and as soon as reasonably possible thereafter to the school community are an essential component of any plan for managing a disaster successfully. Language for press releases and letters that can be easily adapted as required should be prepared in advance and used at the time of an emergency to notify staff, parents, students, and the general public of the facts concerning a loss or emergency. Improper handling of a crisis can damage a school's reputation, make a bad situation worse, and result in additional loss to the school when it can least afford it.
- Resume operations as quickly as possible. Events most likely to interfere with resumption of normal activity are fire, windstorm, flood, and explosion. Planning for resumption of operations includes establishing the "probable maximum loss" for each eventuality, determining which operations are least likely to be affected by each possible event, planning for alternative replacement space on the campus or in a nearby facility, determining the length of time necessary to repair the damage in a maximum loss situation, and determining the amount of business interruption insurance needed to cover any "extra expense" to the school as a result of the emergency. In short, the school should plan for a "worst case" scenario. Then, if the worst happens, the school will be prepared.

## Guidelines for high-risk areas

Because three areas of the school present greater possibilities for risk than others, detailed discussion of them is offered here. These three areas are athletics and physical education, science laboratories, and school buses and vans.

### *Athletics and physical education*

The single largest exposure faced by most schools is a serious or disabling injury or death of a student as a result of participation in athletics or physical education. Although serious injuries happen infrequently, a serious injury is catastrophic to the injured student, the student's family, and the school itself. Insurance statistics show that football accounts for more than half of disabling injuries and deaths and gymnastics for another one quarter. Boxing, diving, and wrestling are three other high-risk sports. Other sports and activities are less likely to result in serious or disabling injuries, but even cheerleading has resulted in catastrophic injury when acrobatics or pyramids have been part of the routine.

Although there will always be some risk of serious injury or death in active sports, many injuries can be prevented through a well-run loss

control program. A program can also reduce the likelihood of liability suits when serious injury or death occurs, and even if a liability suit is brought against the school, a loss control program can greatly improve the school's chances of defending itself successfully.

The potential for catastrophic loss and the rapidly increasing sizes of damage awards have led many insurance companies to exclude coverage for athletic participants from general liability policies.

Traditionally, an athletic participant assumes the risk of the sport, but that assumption of risk is limited to risks that the participant understands. This places the burden on the school—and on the instructor (instructor/coach)—of communicating the risks involved and being certain that the participant understands them. It is not enough just to inform or warn that a sport has potential risks; the participant must be conscious of and understand those risks. How well a participant appreciates the risk of the activity depends upon his or her level of experience with the activity. The less experience a participant has, the more it behooves the instructor to explain risks of the activity clearly and fully.

The risks a participant assumes are those normal to the activity itself. An athlete has the right to expect that equipment is not defective, that safety devices are adequate, and that the instructions given are correct; when this is not true, these become negligent acts and the basis for suit. Administrators and instructors must keep clearly in mind that students do not assume any risks due to negligence—a student does not give "license" to anyone to be negligent at his or her expense. Too often a permission slip (or "waiver") signed by parents for a child to participate in an activity is misunderstood; all it means is that the signer assumes the normal risks of the activity. Permission slips and waivers, useful as a form of "advise and consent," should be used for that purpose, but they are unlikely to deter a suit for damages or to protect the school from liability should a serious injury occur.

The *standard of care* expected of instructors is that of a "reasonable and prudent professional." The instructor must have professional competence and training and must be up to date on the "best practices" of the profession. Courts hold that the instructor must not only *be* competent but must also *act* competently—that is, perform in a professional manner.

Professional conduct has three parts: supervision, instruction, and care of facilities and equipment.

*Supervision*

Failure to supervise properly results in a significant number of suits against schools. There are two types of supervision—general and specific. *General supervision* means that the instructor is within the activity area overseeing the activity. *Specific supervision* means that the instructor is at a specific location of activity with one or more participants. The type of supervision required in a particular instance depends upon the nature of the activity and the participants' level of skill.

Three things determine the adequacy of *general supervision.* First, the instructor must be immediately accessible to anyone who needs him or her. The instructor must not leave the premises. If injury occurs, some competent professional must be called either to take care of the injured person or to supervise the other participants. Further, the instructor must be able to oversee the entire program systematically.

Second, the instructor must be alert to dangerous conditions that might arise, anticipate such conditions, and have specific accident prevention procedures in place. Dangerous conditions that the instructor must be prepared to deal with are rowdyism and bad behavior, defective premises or apparatus, lack of protective devices or safety equipment, and overextended participants.

Third, the instructor normally should be competent in first aid and emergency procedures appropriate to the activity. Emergency procedures should be in place. Holding a certificate for first aid and emergency care is no protection against negligence; it is the specific act of care in a given instance that is evaluated in court. A certificate is only evidence to an employing administrator that an individual has been exposed to certain first aid knowledge and practice and presumably has a certain level of competence in rendering first aid.

However, a generalized first aid certificate is not enough; the instructor's knowledge of emergency procedures must extend to those injuries most likely to occur in a particular sport or athletic activity.

*Specific supervision* is necessary in two circumstances. First, when introducing an activity, the instructor must stay with the participant until the participant is familiar enough with the activity to evaluate his or her own capacity and to understand and adhere to safety practices and procedures that have been established for the activity. Second, when an activity is going on under general supervision of the instructor and he or she notes any failure to adhere to rules and regulations or sees some change in the condition of a participant, such as fatigue or apparent lack of appreciation of danger, the instructor must change over from general to specific supervision until the situation has been taken care of.

It is important for supervisors and instructors to understand that physical presence is not the same thing as supervision. The key to proper supervision is being aware of what is going on, being in control of the situation at all times, and taking action whenever action is required.

*Adequacy of instruction*

When a student is injured while participating in athletics or physical activities, the instructor may be held liable if he or she provided inadequate instruction or did not properly communicate the degree of risk involved in the activity. Quality of instruction, part of professional competence, involves both knowledge and judgment.

Much more than knowledge of a sport is essential to proper coaching. The instructor must know proper techniques for teaching particular skills as well as proper progression and sequencing of activities. Activities and drills must be appropriate to the age and maturity of students, must take into account the progression from fundamentals through more advanced levels of skill, and must consider individual strengths, weaknesses, and developmental patterns. Proper conditioning of students is essential to preventing injury.

Some independent schools, for reasons of philosophy, tradition, or cost, require or encourage all or most faculty members to coach sports or supervise activities in which they have no special competence or training. This practice is becoming increasingly difficult to justify or defend. School administrators who assign unqualified staff members to coach sports or supervise activities in which they have inadequate training may incur liability for injuries that occur.

*Facilities and equipment*

Administrators and instructors have an obligation to provide a safe environment and proper equipment for athletic activities. The risk of an activity that the student assumes does not include defective equipment or hazardous facilities.

Proper maintenance and care of equipment is essential. "Defective equipment" includes improper installation of equipment and inadequate maintenance. It is the instructor's responsibility not to use defective equipment.

Athletic facilities should not present hazards to participants or spectators. "Facilities" includes gymnasiums, playing fields, bleachers, spectator protection (fences, screens), tennis courts, and locker rooms and showers. Playing areas should be designed so that activities do not overlap. An adequate inspection policy for athletic equipment and facilities includes assigning definite responsibility for periodic inspections.

Occasionally, a dangerous condition arises suddenly that must be remedied immediately to prevent an accident, as when lightning appears in the area, which may mean stopping a game in progress. At other times, dangerous conditions can be anticipated—a storm warning is posted—and action be taken—postponing a mountain climbing trip.

School administrators also have a duty of care in their supervision. The key element is their diligence in exercising that duty of care in seeking out dangerous conditions and taking expeditious action to remedy dangerous conditions that they know, or should have known, about. The best defense is that there is no negligence, that instructors and supervisors perform according to appropriate professional standards.

*School athletic loss control checklist*

The following loss control checklist offers a valuable list of questions the school should ask itself about its athletic and physical education program.

*Administration*

1. Have school policies been adopted and distributed to all physical education instructors and coaches prohibiting unsupervised physical education classes and athletic practice sessions?

2. Are enough supervisors assigned to physical education and athletic activities, based on the nature and size of the group and the type of activity involved?

3. Do administrators actively supervise physical education and athletic programs as well as academic subjects?

4. Are only competent, qualified people employed for physical education and athletic programs?

Are they trained in first aid and emergency care?

Have instructors of high-risk sports (football, gymnastics, wrestling, boxing, diving) received special training in the types of injuries most likely to occur in these sports and in emergency care in case of accident or injury?

Are instructors required to take periodic refresher courses in first aid and emergency care?

5. Are less-qualified instructors (new teachers, those new to a sport) given special supervision by experienced instructors or coaches or administrators until they become qualified?

6. Is supervision provided on playgrounds and in gymnasiums before and after school?

7. Are athletic activities involving physical contact governed by the concept of equitable competition based on size and skill?

8. Does the school adhere to and enforce rules prohibiting the use of the head as the primary contact in tackling and blocking in football?

9. Are medical examinations required prior to participation in contact and endurance sports? Are medical reports reviewed by the school physician, and are the physician's recommendations followed?

10. Have procedures for accidents and emergencies been established and distributed to all instructors?

11. Are written reports required for all serious accidents? Are accident reports retained on file until the student has reached majority and the time of the statute of limitations for the state has gone by? Where are they filed?

12. Are parental permission slips or waivers required for athletic activities?

13. Do instructors receive periodic training in tort liability where athletic injuries are concerned?

14. Is accident insurance carried for all students?

*Supervision and conduct of activities*

1. Are physical education teachers and coaches instructed and trained to warn students of the possible dangers in the activities in which they participate and the proper safety procedures to follow to reduce the possibility of injury?

2. Are physical education teachers required to follow approved syllabuses, training programs, or instructional sequences? Do they need special permission to deviate from adopted programs and are extra safety precautions required?

3. Are physical education teachers and coaches required to assign pupils to activities that are within their abilities, based on their physical condition, size, and skill?

4. Are physical education teachers and coaches required to prepare their pupils gradually for physical activities, progressing from simple to complex tasks in strenuous and dangerous activities?

5. Have physical education teachers and coaches been instructed to give special attention to excuses for illness and injury and not to require participation of ill or injured students?

6. Are physical education teachers and coaches reminded periodically of the need for adequate supervision through seminars on tort liability, administrative meetings, and refresher courses?

*Equipment and facilities*

1. Have administrative policies been established and distributed to the physical education, athletic, and maintenance departments concerning periodic inspection of equipment and facilities?

2. Has each department drawn up a list of pro-

cedures for inspection and maintenance of equipment and facilities (equipment to be inspected, procedures for inspection, and frequency of inspections) and delegated responsibility for inspections to an individual?

3. Are records kept on all equipment and facility inspections (inspector's name, date of inspection, condition of equipment and facilities, and recommendations for repair)?

4. Are defective equipment or unsafe facilities taken out of service and marked with conspicuous warning signs that they are defective or unsafe and not to be used?

5. Have safety rules been adopted regulating the use of swimming pools, trampolines, springboards, and other potentially dangerous equipment? Have these rules been thoroughly explained to participants, and are the safety rules conspicuously posted near the equipment?

6. Have safety rules been adopted regulating vehicular traffic on all playgrounds and other sports and recreational areas that people and spectators use? Are these rules conspicuously posted?

7. Are the sidelines at football, soccer, baseball, and other athletic contests kept clear of unauthorized people and hazardous equipment?

8. Are gyms, training rooms, weight rooms, wrestling rooms, and other athletic facilities locked when not supervised? Is there a school policy prohibiting loaning or giving keys to students?

*Medical emergencies*

1. Is all pertinent medical data made available on a "need to know" basis to instructors about students who have psychological or physical handicaps, including chronic ailments such as diabetes, epilepsy, heart disease, allergies, or asthma?

2. Are physical education teachers and coaches instructed in procedures for summoning emergency medical care?

3. Is a telephone readily available to each physical education teacher or coach? Are the telephone numbers for the following posted near the telephone?

Ambulance (or emergency operations center)
Team or school physician
Certified athletic trainer (if available)
Fire department (or emergency operations center)
Police department (or emergency operations center)
Coast Guard or marine patrol for water rescue (if relevant)

4. Are physical education teachers and coaches of high-risk activities (football, gymnastics, boxing, wrestling, diving) trained in advanced first aid and emergency care?

5. Are adequate quantities of first aid and emergency care equipment readily accessible to each athletic activity area? Are these conspicuously marked, and have all instructors been informed of their locations and use? Are they inspected periodically?

## *Science laboratories*

Science activities can injure students and staff and damage school facilities and the environment. Science laboratories are always the potential sites of fire, explosion, chemical burn, radiation, glass breakage, and poisoning. The school and its science teachers can be held liable for negligent acts, errors, or omissions in the science program, which requires particular attention by both administrators and teachers because of the safety hazards involved.

*Duties of care*

Science teachers have basic "duties of care," which are related to the legal concept of negligence: (1) the duty to *instruct* adequately, (2) the duty to *supervise*, and (3) the duty to provide *adequate and safe equipment*.

Negligence is conduct that falls below a standard of care established by law to protect others against an unreasonable risk of harm. If the standard of care has not been specifically established by statute, the actions or inactions of an individual are measured against the behavior of a reasonably prudent person under the same circumstances.

One important aspect of the conduct of the "reasonably prudent person" is anticipation. Such a person is expected to be aware of the foibles of human nature, particularly where students are involved, and be able to anticipate where diffi-

culties might arise. The implication for science instruction is that a teacher may not direct a student to perform a dangerous experiment without giving adequate instruction and supervision.

Students in laboratory classes should not be allowed to engage in an activity without first receiving complete instructions from the teacher. Instructions should include an explanation of the procedures involved, suggestions on conduct and safe practices while performing the activity, and identification and clarification of any risks involved.

The school and teachers must not only act prudently and exercise due care, they must be able to demonstrate in a court of law that they have done so. Just as physicians practice defensive medicine, school people must be prepared to defend their actions and practices. For this reason, teachers may wish—and schools may require teachers—to make laboratory safety a regular part science instruction. Written records to indicate that students have been properly instructed on laboratory safety normally include

- Written lesson plans on laboratory safety
- Copies of student tests on laboratory safety
- Written evaluations of each student's laboratory work that include evaluation of compliance with established laboratory safety practices and procedures
- A signed "safety contract" in which each student agrees to abide by safety rules

Schools and teachers who have written records on file supporting their instructional practices may find these helpful in establishing a defense against a claim of negligence should the need arise.

One aspect of proper supervision is the control of student behavior in the laboratory. Teachers are frequently held liable for injuries resulting from the misbehavior of students. Teachers must stress proper conduct in the laboratory and not tolerate student misbehavior of any type.

The teacher's example is important. Instructors who show little or no respect for proper laboratory procedures are in no position to complain when students imitate their bad example. Therefore, it is incumbent upon science teachers to be informed of latest developments in safe laboratory operation and to institute them as applicable. Instructors can be held liable for *failure to act* as well as for *acting improperly*. Instructors who fail to use safety and health practices that are routine procedures in other science laboratories may be risking serious personal liability.

*Laboratory equipment*

Another potential source of trouble for the school science teacher is laboratory equipment. While acquiring and maintaining equipment may ultimately be the responsibility of the school, the responsibility for regular maintenance falls upon the teacher. An injury sustained by a student as the result of poorly maintained equipment could have serious financial and occupational consequences to the instructor involved. Teachers can minimize personal liability by notifying the school's administration of defective equipment and retaining file copies of such communications. Teachers should never knowingly use defective equipment for any reason.

*Protection of body and clothing* is an important safety consideration. Laboratory safety aprons should be worn during chemistry laboratory work, and in other laboratories as necessary to protect against injury. Loose-fitting, frilly, or flammable clothing should be discouraged or prohibited. Teachers have the responsibility to establish and enforce any and all special clothing standards deemed necessary for safety.

Clothing on which irritating chemicals have been spilled in any appreciable quantity should be promptly removed, particularly tight-fitting clothing or clothing that is next to the skin. Organic chemicals may not cause skin irritation from brief exposure, but they can cause severe dermatitis if left in contact with the skin for prolonged periods. Corrosive or caustic chemicals should be promptly flushed from affected areas with copious amounts of water. If after flushing the skin appears irritated or inflamed, the student should be given medical treatment.

*Laboratory coats* are intended to prevent contact with dirt and minor chemical splashes encountered in laboratory work. The cloth laboratory coat can itself become a fire hazard to the wearer, however. Laboratory coats do not significantly resist penetration by organic liquids and, if sig-

nificantly contaminated by them, should be removed immediately. *Plastic or rubber aprons* provide better protection from corrosive or irritating liquids but can complicate injuries in the event of fire. Furthermore, because plastic aprons can accumulate a considerable charge of static electricity, they should not be worn when flammable solvents or other materials could be ignited by a static discharge. A hot crucible may literally fall through a plastic apron; rubber-covered muslin will stop it.

It is strongly recommended that teachers and students wear *protective goggles* at all times during chemistry laboratory work, since the student, and sometimes even the teacher, cannot reliably judge the presence of risk. Protective eye devices should be required by school policy for teachers and students when

- Cutting or heating glassware
- Examining or dissecting organisms stored in preservative chemicals such as formalin or alcohol
- Heating liquids or solids in vessels subject to heat fracture
- Using caustic or explosive chemicals/materials
- Using hot liquids or solids

Teachers should find out ahead of time which students wear contact lenses and require them to wear *antisplash goggles*. If any of these students spill or splash harmful chemicals in their eyes, *their contact lenses must be removed immediately*, before their eyes are flushed with water.

At least one *eyewash fountain* should be in every science laboratory where chemicals are present for immediate and thorough washing of eyes when protective measures fail and a corrosive chemical gets in someone's eyes. An eyewash fountain is a permanently installed basin with twin streams of water that gently wash both eyes and a valve that may be operated by hand or foot or by pushing a bar with the head. In the absence of a fountain, a cold water faucet can be adapted for this use with an aerated nozzle and approximately five feet of rubber tubing. Eyewash stations consisting only of a wall-mounted bottle are of doubtful value, because they contain too little water for chemistry laboratory applications.

Each science laboratory should be equipped with a *deluge shower* for quenching clothing fires and for flushing off extensive spills of corrosive or caustic chemicals. The master valve should be "on," with water pressure to the chain-pull valve, whenever laboratory work is in progress. Showers should be tested at least once each marking period and any faulty operation reported and corrective action taken immediately.

The laboratory, science classroom, and preparation room should be well ventilated. Demonstrations or laboratory work involving generation of irritating or noxious gases should be performed under a *fume hood*. If an experiment or demonstration causes an uncomfortably irritating or acutely unpleasant odor, chances are that the concentration is too high to be safe. Solutions of fuming liquids should be mixed under the fume hood. If the atmosphere of the laboratory becomes contaminated, the area should be evacuated and ventilated. Although the tradition of fetid odors has become associated with the study of chemistry, the atmosphere of the high school laboratory need not, and should not, be uncomfortable. Experiments can be designed to minimize generation of noxious gases.

### *Other precautions*

Science teachers can take other steps to reduce the likelihood of accident or injury in the laboratory. Laboratories should be locked when not in use. Students should never be permitted to work unsupervised in laboratories. Chemical storage facilities should be checked for compatibility of chemicals stored together and for chemicals that become unstable with age. Chemical storage areas should be secure, fire-resistant, and equipped with heat and smoke detectors. Teachers should perform classroom experiments prior to assigning them to students. Spills are especially dangerous, and floors should be mopped dry after cleanup to minimize the danger of slipping and falling. The outsides of bottles containing strong reagents should be flushed with water frequently to prevent contact of spilled chemicals with hands.

### *School buses and vans*

Transporting students in school buses and vans has the potential for catastrophic loss. The school should assess carefully the risks and the related costs associated with transporting students in school-owned vehicles. Insurance companies have become alarmed at the frequency and the seriousness of school vehicle accidents involving multiple student injuries and deaths. Some insurance companies consider the potential for significant loss so serious that they have canceled or failed to renew policies covering school bus liability exposures and no longer write these policies.

The "cost" to the school associated with the risk of operating school buses and vans involves not only actual damages or compensation to injured students and staff, property damage to school vehicles or property of others, and the cost of defense against suits (all or most of which may be covered by insurance and paid for in premiums); it also involves loss of time by school employees involved in defending suits or claims, the rising cost of insurance, the emotional cost to all involved, and the damage that negative publicity may do to the school.

When it is not feasible for the school to contract for transportation services with an unrelated commercial entity (which can transfer at least some liability to the contractor through a carefully drawn agreement), it must take particular care to operate its transportation program with safety as a primary consideration. Insurers consider the quality of the school's safety program, its transportation policies and procedures, the condition of the school's vehicles, and the seriousness of the school's commitment to safety as factors in rating for insurance purposes and assessing premiums. Because of the potential for catastrophic loss, many insurers seek a firm commitment to a comprehensive transportation safety program as a condition of coverage.

National concern over the safety of school vehicles led Congress to mandate federal standards for school bus construction and operation under the National Highway Traffic Safety Administration. The standards set minimum requirements for bus identification and equipment, driver qualifications and training, vehicle maintenance, and procedures to minimize highway hazards. The NHTSA also issued minimum standards for school bus construction with requirements for fuel system integrity, braking systems, body joint strength, emergency exits, passenger seating, and rollover and crash protection.

States are expected to adopt these federal standards and enforce them through state licensing, inspection, and registration regulations. Many states have partially adopted the federal standards, some have issued regulations or requirements that conflict with the federal guidelines, and others have issued exemptions from state requirements for some nonpublic school vehicles. Moreover, in some states that have adopted the federal standards, enforcement has been lax or nonexistent. Consequently, much confusion and uncertainty exists, especially among nonpublic schools, about how best to comply with conflicting guidelines and regulations. Much of the confusion and contradictory regulation centers around the use of passenger vans. Unfortunately, conflicting guidelines mean that the school must consider *the legal issue of what is required* by the state in operating a vehicle that transports students separately from the *risk management issue of what is a safe vehicle* in which to transport students.

Since school buses are licensed and inspected by states, schools must comply with state requirements for licensing and inspection of vehicles used to transport students.

Because the federal standard is a *safety* standard, it has the effect of defining a safe school vehicle as one that complies with federal design, construction, equipment, identification, and marking requirements. Schools are urged to move in the direction of compliance with the federal standard to the degree permitted by state laws.

The federal standard distinguishes between type 1 and type 2 school vehicles; type 1 carries more than sixteen pupils, and type 2 carries sixteen pupils or less. Type 1 vehicles must be painted national school bus glossy yellow, equipped with a system of signal lamps and mirrors, and identified with the words "school bus" in large letters. Type 2 school vehicles must comply with *all* of the requirements for type 1 school vehicles or *none* of them.

However, subsequent guidelines issued by the National Highway Safety Traffic Administration for implementing the standard have made the distinction between type 1 and type 2 vehicles irrelevant by mandating that all school vehicles designed for carrying more than ten persons that are used to carry students to and from school or school-related events are school buses and must be equipped with all the equipment specified for school buses by the federal motor vehicle safety standards, including school bus warning lights, painted glossy yellow exterior, and marked both front and rear with the words "school bus."

Transporting students in a school vehicle that does not meet federal highway safety standards (unless prevented from doing so by state regulations) may expose the school to an irrefutable claim that it knowingly operated an unsafe vehicle.

Whether a school has one vehicle or a fleet, its administrators should take seriously their responsibility to students to operate buses safely. School administrators should evaluate the risks associated with transporting students by looking carefully at the same risk factors considered by insurance underwriters—*vehicles*, *drivers*, and *routes*—and take whatever action is necessary to remedy deficiencies

The following questions are intended to help school administrators develop transportation policies, procedures, and practices that will better protect students against injury and reduce the likelihood of a successful damage suit against the school.

*School vehicles*

1. Do all vehicles owned or leased by the school that are used to carry students comply with state laws regulating licensing, registration, periodic inspection, and required equipment?

2. Do all school vehicles owned or leased by the school that are used to carry more than ten persons to or from school or school-related events comply with federal safety standards to the degree permitted by state law?

3. Are school-owned vans that do not comply with federal school bus construction and identification standards limited by policy and seating capacity to ten persons, including the driver?

4. When purchasing a new vehicle, does the school adequately protect itself by requiring the dealer from whom the school vehicle is purchased to certify that it meets all federal and state motor vehicle safety standards for a vehicle of its size and intended use?

5. Do school vehicles undergo periodic routine preventive maintenance? Are all maintenance and repairs of the vehicle recorded in a vehicle log?

6. Is there a vehicle safety inspection checklist that drivers must complete daily before their first run in the vehicle?

7. Does the school have sufficient backup vehicles in good operating condition to provide a safe substitute for any vehicle found defective?

8. Is adequate financial provision made for maintaining vehicles properly and replacing them when they are no longer dependable?

9. Since the largest number of accidents and injuries occur on field trips and athletic trips, which typically involve longer distances and greater speeds, are newer and more reliable vehicles assigned to those trips?

10. If school employees perform maintenance and repair procedures on school vehicles, what is the level of competence of mechanics? How are waste oil and other potentially polluting materials disposed of?

11. Are school buses and vans equipped with a speed control device ("governor") that limits the speed of the vehicle to the legal limit?

12. Is the use of seat belts required of employees and students in vehicles so equipped? Technical experts disagree whether seat belts in school buses increase or decrease the likelihood of student injury. Because of this disagreement, the policies of states and localities vary considerably. The school needs to look to state laws, the practice of local public schools, recommendations of its bus insurer, and advice of counsel on whether to install belts in buses, but *if the belts are installed, the school assumes the duty of seeing that students use them.*

*Drivers*

Insurance companies assign a high degree of importance to the selection and training of drivers in determining the company's exposure to loss.

Drivers for regular school bus routes are hard to find and hard to retain. The turnover among drivers tends to be high, the pay low, and the working conditions unattractive. Generally, drivers work split shifts, starting early in the morning and ending late in the afternoon. Sometimes they are called for evening and Saturday runs for field trips and athletics. They contend daily with noisy and sometimes unruly students. Drivers tend to come from the ranks of the unemployed or underemployed, housewives, college students, or retired persons. Some schools use members of the maintenance or grounds staff to drive buses. Schools that have trouble finding enough qualified drivers sometimes relax requirements or are less selective than they might otherwise be. Drivers over sixty years of age may have less visual acuity, slower reaction time, and become more quickly irritated by the behavior of young children than others in the driving population.

Requirements for school bus drivers or drivers of school vehicles that transport children differ widely from state to state. Major areas of variation include frequency and extent of medical examinations, minimum and maximum age limits (which now may be affected by the Age Discrimination in Employment Act), requirements for driver training, and the type of license required to drive vehicles that transport students.

Here are questions the school should ask itself about its drivers.

1. Are teachers and coaches who occasionally drive students in school vehicles properly licensed and adequately trained? Some states require employees who drive school vehicles containing students, whether compensated through regular salary or additional stipend for driving, to have a chauffeur's license or other special permit.

2. Are driver selection procedures and hiring practices thorough enough to determine adequately whether drivers are physically, emotionally, and mentally fit?

3. Are character references, job histories, and driving records investigated thoroughly? Where permissible or required, are background checks made for criminal records or motor vehicle violations?

4. Are interview procedures and medical examinations sufficiently comprehensive to determine mental and emotional fitness and to uncover problems such as drug and alcohol dependency?

5. Are physical examinations required each year? Are drivers checked for visual acuity and response time?

6. Are driver-training procedures adequate? Could the training received be compared adversely to training received by local public school drivers? Are all drivers required to participate in a mandatory defensive driving course?

7. Does the school have a policy defining the circumstances under which teachers, coaches, parent volunteers, and others may transport students in their own vehicles to or from school-related activities?

8. Does the school have a policy defining the circumstances under which school employees other than regular drivers may drive school vehicles with or without students?

9. Do state requirements dictate specific training programs or requirements or periodic review courses for school bus drivers?

10. Is the school able to participate in, or contract for, driver training offered through the local public school district?

11. Are drivers trained in procedures to follow in case of accident, fire, breakdown on the highway, serious illness or injury of a student passenger, or other emergency?

12. Is the vehicle equipped with CB radio or other emergency communication device? Does a designated administrator spot-check drivers' on-the-road performance by periodically and unpredictably following buses on scheduled runs?

13. Are parent (and student) complaints about driver practices consistently investigated?

*Bus routes*

Following are questions about bus routes that the school needs to consider.

1. Are bus routes planned to eliminate hazards wherever feasible? Hazards that should be avoided where possible are railroad crossings, dangerous hills and sharp curves.

2. Are bus stops and pick-up points selected with adequate provision for student safety?

3. Is the schedule of pick-ups and drop-offs

constructed in such a way that drivers are not subjected to time pressures, yet such that drivers reach scheduled stops on time so that students are not left unsupervised for extended periods?

4. Does the school routinely cancel or delay the opening of school when weather conditions warrant in order to reduce driving hazards?

5. Is the bus loading and unloading area on the school premises selected with safety in mind? Is the loading-unloading area supervised when in use to reduce injury to students?

6. Does the school take all reasonable measures to ensure that buses are on time, discipline is enforced, and all route and schedule changes are communicated to the appropriate parties?

*Reporting procedures*

All drivers of school vehicles should be held responsible for their assigned vehicle, whether for single or regular use, and should be required to report to the supervising administrator in writing any damage to the vehicle, any motor vehicle violation for which cited, and any incident or accident.

An *incident* is an occurrence that may or may not involve injury to a person or damage to property. Some examples: (1) a bus comes in contact with another vehicle or stationary object with damage so slight that little or no repair is needed; (2) another vehicle improperly or illegally passes a school bus while it is loading or unloading students; (3) a "close call" occurs at an intersection (either through the fault of the bus driver or another party). Such incidents often receive little attention because no significant damage results and no payment is made, either from the school's operating budget or through an insurance policy. Individually, these incidents may not seem important, but over time they may provide significant information to the school that indicates trends or trouble spots where some action by the school could prevent a serious accident. It is important to stress to all drivers that *a report must be filed on all incidents.*

An accident report should be completed whenever a person is injured, damage to property occurs, or when required by state motor vehicle department regulations. Each vehicle should be equipped with an accident reporting packet to be used by drivers at the scene of an accident. This packet should contain a driver's accident report, witness cards, and instructions to follow at the accident scene.

When an accident occurs, it is often accompanied by panic and confusion. It is important for drivers to know *what to do* and *what not to do* since improper action can result in greater injury.

In the event of an accident, the bus driver's first responsibility is to ensure the safety of students. The driver should

- Account for all passengers
- Check for injuries
- Administer first aid
- Notify police and school authorities

If for any reason the driver is unable to fulfill these obligations, he or she should appoint mature students to help. Students should not normally be allowed to leave the bus after an accident occurs, but sometimes the danger of staying on the bus is greater than the hazard of evacuation. Reasons for evacuating a vehicle are fire, threat of fire or explosion, unsafe vehicle position, and danger of another collision.

If the bus must be evacuated, students should be moved to a safe location, well off the road and away from the bus. In an emergency, it is possible for the emergency door to be blocked by too many children trying to exit at the same time. This situation can be anticipated by conducting emergency exit drills during the school day and on school property.

An emergency or accident is the worst time for finding out that necessary emergency equipment is not on the bus. All drivers should know the location of and how to use

- Fire extinguisher
- First aid kit
- Flags/reflectors
- Fuses/flares
- Hazard flashers
- Wrecking bar/fire ax

In addition to knowing what to do (and what not to do) and having the right equipment on the bus, drivers should also carry in each bus a list of emergency phone numbers: the school office, the duty administrator's home telephone number

if the office is closed, state and local police, ambulance, and local hospital. Detailed instructions for handling most contingencies should be carried in the school's emergency kit.

When an accident involves another vehicle, drivers should obtain the following information from the other driver.

- Name and address of driver
- Name of vehicle owner if other than the driver
- Proof of insurance
- Name of vehicle owner's insurance company and insurance agent
- Vehicle identification number and license plate number

Since most states require a written police report to be filed when an accident occurs, the following information should be recorded at the accident scene or as soon thereafter as possible.

- Apparent cause of the accident
- Road and weather conditions
- Time of day
- Direction the vehicles were traveling (including a schematic or diagram)
- Exact location of accident
- Extent of any injuries and the names and addresses of injured parties
- Extent of property damage
- Names and addresses of witnesses

The school may design its own form for use at the accident site or use a standard police report form supplemented by other information as necessary. A designated administrator may wish to assist drivers in completing the official accident report or at least review it before submitting it to the proper officials. An accident report will also need to be filed with the school's insurance company. Records pertaining to the accident and copies of all reports should be kept in school files.

# Glossary

**Actual cash value.** The cost of replacing property with like kind and quality minus accumulated depreciation.

**Additional insured.** A person or entity other than the named insured who is protected by a policy.

**Agreed-amount endorsement.** An amendment to the property portion of an insurance policy whereby the policyholder agrees to carry a specified amount of insurance and the insurer suspends the coinsurance clause.

**All-risk.** Property insurance that covers all causes of loss except those specifically excluded in the contract, in contrast to policies that cover only "named perils."

**Binder.** A memorandum of an agreement to insure issued to record the transaction during the writing of a policy.

**Blanket crime policy.** A blanket policy insuring against loss due to employee dishonesty, and losses on and away from the premises, counterfeit currency, depositor's forgery, and loss of money, securities, and other property through theft with a single limit of insurance applying to all coverages.

**Blanket insurance.** A single amount of insurance that covers multiple items. For example, one amount of insurance may cover two buildings, or one building and its contents. Such policies usually require the fulfillment of certain restrictions that may not be required in "specific" or "itemized" policies, such as coinsurance.

**Boiler and machinery insurance.** Coverage on machinery and equipment subject to internal pressure from steam, air, gas, water, or other liquids, such as boilers, refrigeration units, and air conditioning compressors.

**Bond.** A contract insuring the honesty of an individual or the accomplishment of certain tasks, such as completion of a construction project. The former is referred to as fidelity bonding and the latter is surety bonding.

**Builders' risk.** Coverage that protects a building while under construction.

**Business interruption insurance.** When a calamity prevents the normal operation of the school, this insurance covers lost revenues and continuing expenses that cannot be avoided.

**Certificate of insurance.** A written document used to verify the existence of insurance coverage, often when one person uses facilities owned by another.

**Coinsurance clause.** A clause contained in some

policies that requires the insured to carry insurance equal to a stated percentage of the value of the insured property in order to collect partial losses in full up to the limits of the policy.

**Collision.** A form of automobile physical damage insurance designed to cover a vehicle for collision with another object or when it overturns.

**Completed operations.** This term refers to the liability a contractor might incur from improperly performed work. At one time, completed operations was regarded as part of product liability but is now treated as separate coverage.

**Comprehensive auto.** A form of auto physical damage insurance designed to cover a vehicle for loss from fire, theft, and all other causes except collision.

**Comprehensive general liability insurance.** A broad liability form that provides all-encompassing liability coverage subject only to certain exclusions. This form supplies automatic coverage for unknown exposures.

**Contingent liability.** A liability that may be incurred by an insured as a result of negligence on the part of independent persons engaged by the insured to perform work. The most common example is the contingent liability of a principal contractor, which may result from construction operations undertaken by subcontractors. In property damage insurance, contingent liability is the possibility of financial loss to a policyholder resulting from damage or loss to the property of another, such as a supplier.

**Contractual liability.** Liability as set forth by agreements between people as distinguished from liability imposed by law (legal liability).

**Contribution.** When more than one policy has been issued to insure a given risk, loss must be divided equitably between the various policies. According to the insured amount and policy terms, each "contributes" its share of the loss.

**Deductible.** The insured pays an agreed-upon initial portion of a loss, which the insurer deducts from the total loss before payment. Deductibles of various types and levels are available.

**Difference in conditions (DIC) insurance.** A policy insuring against losses not usually covered by fire and business interruption policies, such as those caused by flood, earthquake, landslide, and other unusual, unanticipated, accidental occurrences.

**Directors' and officers' liability insurance.** Protects officers and directors of a corporation against damages from claims resulting from negligent or wrongful acts in the course of performing their duties. Also covers the corporation for expenses incurred in defending lawsuits arising from alleged wrongful acts of officers or directors. These policies always require the insured to retain part of the risk uninsured through deductibles and coinsurance.

**Drive-other-cars clause.** A provision in an automobile policy to protect the policy holder when driving cars other than the one described in the policy.

**Educators' legal liability policy.** A special form of directors' and officers' policy designed for schools that generally covers trustees and all (or some) employees.

**Employer's liability.** Legal liability imposed on an employer making the employer responsible for paying damages to an employee injured through the employer's negligence. Generally replaced by "workers' compensation," which compensates the employee whether the employer has been negligent or not.

**Endorsement.** A written amendment that alters the content of an insurance policy.

**Errors and omissions insurance.** Policies that cover damages loss to others that arise because services or obligations are carelessly or erroneously discharged.

**Excess insurance.** An excess policy is one that does not pay until a loss exceeds an agreed amount. This amount may or may not be insured elsewhere.

**Expected losses.** An estimation of losses that can reasonably be predicted to occur in a future period based on past loss experience.

**Experience rating.** A plan devised to distinguish between average, better than average, and worse than average liability risks and the use of past loss experience and past premiums as factors in a computation that surcharges or credits premiums.

**Exposure.** The value or sum total of values that, if destroyed, would be covered under an insurance policy. Also refers to the danger or threat of loss, such as a liability exposure.

**Extra-expense insurance.** Coverage that indemnifies a business or institution for the added costs of continuing operations following an insured loss.

**Fire legal liability insurance.** A policy form that covers fire damage to nonowned property in one's care, custody, or control. Fire legal liability is usually purchased by a lessee to protect the property of the landlord.

**Floater.** A policy that covers movable property, wherever it may be, such as musical instruments.

**Force majeure.** A clause often appearing in construction contracts excusing the contractor from performance if restrained by acts beyond the contractor's control (such as strikes, storms, floods).

**Frequency.** A term used in relating the number of losses to the total number of exposures in a given time period.

**Garagekeeper's insurance.** A policy form that covers physical damage losses to nonowned vehicles in one's care, custody, or control for repairs, storage, or safekeeping.

**General liability insurance.** A flexible policy that can be adapted to cover a wide range of liability exposures.

**Guest laws.** In some states, legislation provides that the right of action of an injured guest passenger against the driver of an automobile is subject to proof that the driver was guilty of "willful and wanton" negligence. Apart from such laws, known as "guest laws," the guest passenger has the same rights as any other member of the public and is only required to prove "ordinary" negligence.

**Hold harmless agreement.** An agreement normally signed by one person when using the premises or equipment of another person. Such an agreement states that the user will not hold the owner responsible for any damages to the user's person or property.

**Incurred losses.** Losses are "incurred" when they happen. The total of all such losses, whether actually paid to claimants or estimated for future payments when a claim is eventually paid, makes up this figure as it appears in insurance company operating statements.

**Indemnify.** To make a loss good to the one who has suffered it or to provide financial protection to compensate for loss.

**Inland marine.** Insurance covering property that is being transported or is of such a nature (portable) that it may easily be transported, such as musical instruments and audiovisual equipment. "Inland marine" is an archaic term handed down from a period in which the contents of ships needed a separate policy while being transported overland between shipping companies.

**Innkeeper's legal liability.** Hotel and motel operators (and schools that provide guest services for a fee) are legally liable for the safekeeping of guests' property. Extent of liability is established by state law. Innkeeper's legal liability policies insure against the liability imposed by law, usually with a limit of $1,000 for any one guest, and with an appropriate aggregate limit.

**Insurable interest.** A policy is not (knowingly) issued to insure anyone who will not actually suffer financial loss if the calamity that is insured against happens. The policyholder must have an interest in the insured subject. He or she must own it or suffer loss if it is damaged by the insured peril—that is, the policyholder must have an "insurable interest."

**Insurance.** The making of a legal and enforceable contract between one party (called the insurer or underwriter) with another (called the insured) whereby in consideration of a sum of money (called the premium) the insurer agrees to pay an agreed amount of money to the insured if and when the insured suffers some loss or is injured

by some event, which is described in the contract of insurance (usually called a policy).

**Insurance Services Office (ISO).** A voluntary nonprofit association of property and casualty insurance companies providing cooperative services on a national basis. Among its operations are rating, statistical, actuarial, and policy form services for all classes of property and casualty business.

**Landlord's protective liability.** If the owner of a property leases the entire premises to others who assume full control, the owner's chance of being held liable for accidents occurring on the premises is diminished. The owner may insure this liability as "landlord's protective liability" at rates lower than those of the usual "owners, landlords, and tenants" policy.

**Liability insurance.** Insurance that pays costs legally required for bodily injury or physical damage to property of others. Liability policies also pay for the cost of defense but may include these costs in the total available to pay claims.

**Libel.** To publish defamatory statements about another. The general distinction between libel and slander is that the libel must be in writing or similar or permanent form, while slander is oral. The distinction at law is not as simple.

**Limits of liability.** The maximum amount that an insurance company will pay in the event of a covered loss.

**Loss.** The basis for a claim under an insurance policy. A loss is an unintentional decline in or disappearance of value.

**Loss-payable clause.** A condition in a policy whereby the insurance company is directed by the policyholder to pay any loss that may be due to some other person designated in the policy. Usually the payment is made by check or draft payable to both the insured and the designated payee.

**Loss records.** A comprehensive listing of losses and incidents, insured and otherwise, that includes date, location, persons involved, claim payment, and a description of the loss or losses.

**Mercantile open stock insurance.** A policy that can cover burglary, robbery, and theft of merchandise, furniture, fixtures, and equipment owned by the insured.

**Mysterious disappearance.** Disappearance of insured property in an unexplained manner. Mysterious disappearance is now an insured peril under the broad form personal theft policy. (Once there were disputes under theft policies whether property mysteriously lost had or had not been stolen. To avoid argument, insurers stated in such policies that mysterious disappearance was presumed to be due to theft.) Mere disappearance of property such as an article dropped from a boat is not covered since the disappearance is not mysterious.

**Named peril.** One method of supplying insurance coverage. Named peril policies specify the causes of loss that are covered.

**Negligence.** Failure to act with reasonable prudence (the basis of liability insurance).

**Package policy.** A combination of the coverages of two or more separate policies in one contract with one premium.

**Peril.** The cause of loss. Fire is one example of a peril.

**Personal injury liability.** A liability form that pays for legal wrongs arising from false arrest or imprisonment, libel, slander, or invasion of privacy.

**Punitive damages.** Damages awarded separately and in addition to compensatory damages, usually on account of malicious or wanton misconduct, to serve as a punishment for the wrongdoer and, possibly, as a deterrent to others. Sometimes referred to as "exemplary damages." Some policies pay for actual damages but not for punitive damages.

**Renewal certificate.** It is the practice in many cases to issue a short form certificate instead of writing a whole new policy to replace an expiring one. This form is the renewal certificate and contains merely references to the original policy rather than its complete terms.

**Replacement cost.** The cost of replacing property with like kind and quality without a deduction for depreciation.

**Risk.** Any chance of loss; the basis for risk management.

**Risk avoidance.** A risk management technique that involves a cost-benefit comparison of an activity and a judgment that the risk associated with that activity is not justifiable.

**Risk control.** A risk management alternative that consists of risk avoidance, loss analysis, and loss prevention or reduction.

**Risk financing.** A risk management alternative that includes self-insurance, noninsurance, and the transfer of risk.

**Risk retention.** A risk management technique involving the determination of expected losses and the decision to self-insure these exposures.

**Risk transfer.** A risk management technique involving several methods by which risk can be transferred from one party to another. One such method is insurance.

**Safety engineer.** A specialist in loss prevention.

**Scheduled property floater.** A form that is designed to insure various specific items with a specific amount of insurance on each. Any articles of unusual value may normally be written on such a form, provided they are movable. Such forms usually insure against many hazards or often are written against "all risks."

**Self-insurance.** A risk management technique that calls for systematic deposits into a fund to pay one's own losses.

**Special multi-peril policy.** An insurance policy that incorporates property and liability coverages into one overall package.

**Statement of values.** A form describing values of buildings and contents at the various locations to be insured. This form must be updated annually and submitted to the insurance company.

**Subrogation.** The insurer's right to proceed against a third person if that third person is responsible for a claim paid by the insurer.

**Umbrella liability policy.** A liability policy that protects against catastrophic losses that exceed the limits of all underlying liability policies. (See "Excess insurance," above.)

**Waiver.** Voluntary relinquishment of right or advantage by a person.

**Waiver of occupancy clause.** Allows the owner to occupy a facility under construction or renovation during the time of such activity without voiding insurance coverage.

**XCU coverages.** X=explosion, C=collapse, U=damage to underground property. Terms such as this contribute to the sense of mystery that surrounds insurance policies.